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**HARLAN N. PETOYAN, SBN 272429**  
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Attorneys for Defendants,  
**KARL STORZ ENDOSCOPY-AMERICA, INC.,**  
**A California Corporation; and KARL STORZ**  
**ENDOVISION, INC., a Massachusetts Corporation**

**UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JOANNE MURPHY, an Individual; ) **Case No.: 2:15-cv-6303**  
 and LISA M. MISKELLA, an )  
 Individual, ) [Action filed: May 12, 2015]  
 ) Assigned to: Hon. Deirdre H. Hill  
 Plaintiffs, ) Dept. 49  
 )

v. )  
 )  
 )

KARL STORZ ENDOSCOPY- ) **DECLARATION OF HARLAN N.**  
 AMERICA, INC., a California ) **PETOYAN OF DEFENDANT KARL**  
 Corporation; KARL STORZ ) **STORZ'S NOTICE OF REMOVAL OF**  
 ENDOVISION, INC., a ) **ACTION UNDER 28 U.S.C. § 1441**  
 Massachusetts Corporation; KARL ) **[DIVERSITY OF CITIZENSHIP]**  
 STORZ GMGH & CO. KG, A )  
 Business Entity Form Unknown, and )  
 DOES 1 through 1000, inclusive, )  
 )  
 Defendants. )

1           1.     I am an attorney at law duly admitted to practice law in the State of  
2 California. I am an associate with the law firm of Reback, Mcandrews, Kjar, Warford,  
3 Stockalper & Moore, LLP, attorneys of record for defendants KARL STORZ  
4 ENDOSCOPY-AMERICA, INC. and KARL STORZ ENDOVISION, INC. (collectively  
5 "KARL STORZ"). I have personal firsthand knowledge of the facts stated in this  
6 declaration. If called to testify, I could and would competently testify to each and every  
7 one. I make this declaration in support of KARL STORZ 's Notice of Removal of Action  
8 pursuant to 28 U.S.C. section 1441 (diversity of citizenship).

9           2.     On or about July 20, 2015, plaintiffs JOANNE MURPHY and LISA M.  
10 MISKELLA ("plaintiffs") filed the underlying Complaint in the Superior Court of the  
11 State of California, County of Los Angeles, Case No. BC587002.

12           3.     For purposes of determining its citizenship under 28 U.S.C. § 1332(c)(1),  
13 defendant, KARL STORZ ENDOSCOPY-AMERICA, INC. is a citizen of the State of  
14 California because it is incorporated in the State of California and has its principal place  
15 of business at 2151 E. Grand Avenue, El Segundo, California.

16           4.     For purposes of determining its citizenship under 28 U.S.C. § 1332(c)(1),  
17 defendant, KARL STORZ ENDOVISION, INC. is a citizen of the State of  
18 Massachusetts because it is incorporated in the State of Massachusetts and has its  
19 principal place of business in Charlton, Massachusetts.  
20

21           5.     The jurisdictional threshold regarding the amount in controversy has been  
22 met. Plaintiffs served a statement of damages wherein plaintiff's claim \$10,000,000.00  
23 in general damages.

24 ///

25 ///

26 ///

27 ///

28



# **EXHIBIT “A”**

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

KARL STORZ ENDOSCOPY - AMERICA, INC., a California Corporation; See Additional Parties Attachment

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

JOANNE MURPHY, an Individual; and LISA M. MISKELLA, an Individual

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County Of Los Angeles

JUL 10 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Kristina Vargas, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
111 N. Hill Street, Los Angeles, CA 90012

CASE NUMBER  
(Número del caso) **BC 587002**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Paul R. Kiesel, Esq., Kiesel Law LLP, 8648 Wilshire Blvd., Beverly Hills, CA 90211; (310) 854-4444

DATE: **SHERRI R. CARTER**  
(Fecha)

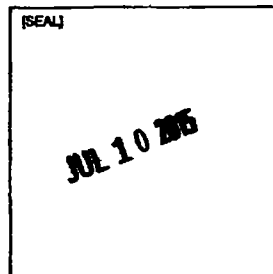
Clerk, by  
(Secretario)

**Kristina Vargas**

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para pruebas de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): **Karl Storz Endoscopy - America, Inc.,**  
**A California corporation**  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☒ by personal delivery on (date):

**SUM-200(A)**

<b>SHORT TITLE:</b> Joanne Murphy, etc., et al. v. Karl Storz Endoscopy-America, Inc.	<b>CASE NUMBER:</b>
--	---------------------

**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

KARL STORZ ENDOVISION, INC., a Massachusetts Corporation; KARL STORZ GMBH & CO. KG, A Business Entity Form Unknown, and DOES 1 through 1000, inclusive

Page 2 of 2

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County Of Los Angeles

JUL 10 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Kristina Vargas, Deputy

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14 Attorneys for Plaintiffs

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF LOS ANGELES

17 JOANNE MURPHY, an Individual; and  
18 LISA M. MISKELLA, an Individual,

19 Plaintiffs,

20 v.

21 KARL STORZ ENDOSCOPY-AMERICA,  
INC., a California Corporation; KARL  
22 STORZ ENDOSVISION, INC., a  
Massachusetts Corporation; KARL STORZ  
23 GMBH & CO. KG, A Business Entity Form  
Unknown, and DOES 1 through 1000,  
24 inclusive,

25 Defendants.

Case No.

BC 587002

COMPLAINT FOR DAMAGES

1. STRICT PRODUCTS LIABILITY
2. FAILURE TO WARN
3. NEGLIGENCE
4. GROSS NEGLIGENCE
5. NEGLIGENCE
6. MISREPRESENTATION
7. FRAUDULENT CONCEALMENT
8. STRICT PRODUCTS LIABILITY
9. FAILURE TO WARN
10. NEGLIGENCE
11. GROSS NEGLIGENCE
12. NEGLIGENCE
13. MISREPRESENTATION
14. FRAUDULENT CONCEALMENT

DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

KIESEL LAW LLP  
Attorneys at Law  
Beverly Hills, California

KIESEL LAW LLP  
Attorneys at Law  
Beverly Hills, California

COME NOW the Plaintiffs, JOANNE MURPHY, an Individual [hereinafter alternatively referred to as "JOANNE MURPHY" and/or "Ms. Murphy"], and LISA M. MISKELLA, an Individual [hereinafter alternatively referred to as "LISA M. MISKELLA" and/or "Ms. Miskella"], by and through their attorneys of record, Kiesel Law LLP and Tracey & Fox, and hereby allege causes of action against the Defendants, and each of them, as follows:

### NATURE OF THE ACTION

1. On December 18, 2010 JOANNE MURPHY underwent laparoscopic gynecologic surgery for what was thought to be benign fibroids. That surgery was performed utilizing Defendants' Storz Morcellator. This technique involves fragmenting the fibroid and/or uterus such that it can pass through a small incision (i.e. the laparoscope port itself). Unfortunately, what was thought to be benign fibroids, was in fact, a deadly uterine cancer known as endometrial stromal sarcoma ("ESS"). Ms. Murphy was diagnosed with ESS shortly after her surgery based upon the pathological analysis of the morcellated uterine tissues.

2. In cutting, shredding and fragmenting the uterus and fibroid within Ms. Murphy, the Storz Morcellator disseminated and seeded ESS cancer throughout her abdominal cavity thereby significantly worsening her long-term prognosis and the natural course of this cancer.

3. On March 6, 2012 LISA MISKELLA underwent laparoscopic gynecologic surgery for what was thought to be a benign fibroid. That surgery was performed utilizing Defendants' Storz Morcellator. This technique involves fragmenting the fibroid and/or uterus such that it can pass through a small incision (i.e. the laparoscope port itself). Unfortunately, what was thought to be a benign fibroid, was in fact, a deadly uterine cancer known as endometrial stromal sarcoma ("ESS"). Ms. Miskella was diagnosed with ESS shortly after her surgery based upon the pathological analysis of the morcellated uterine tissues.

4. In cutting, shredding and fragmenting the uterus and fibroid within Ms. Miskella, the Storz Morcellator disseminated and seeded ESS cancer throughout her abdominal cavity thereby significantly worsening her long-term prognosis and the natural course of this cancer.

///



KIESEL LAW LLP  
Attorneys at Law  
Beverly Hills, California

**PARTIES**

5. Plaintiff JOANNE MURPHY is a resident of the County of Los Angeles, State of California.

6. Plaintiff JOANNE MURPHY suffered bodily injuries and other damages as a direct and proximate result of the use upon and within her of a defective and unreasonably dangerous surgical instrument, the Storz 12-mm power morcellator [hereinafter referred to as the "Storz Morcellator"] during a laparoscopic supracervical hysterectomy procedure for the treatment of uterine fibroids that was performed upon her on December 18, 2010 in Long Beach, California.

7. Plaintiff LISA M. MISKELLA is a resident of the County of New Haven, State of Connecticut.

8. Plaintiff LISA M. MISKELLA suffered bodily injuries and other damages as a direct and proximate result of the use upon and within her of a defective and unreasonably dangerous surgical instrument, the Storz 12-mm power morcellator [hereinafter referred to as the "Storz Morcellator"] during a laparoscopic supracervical hysterectomy procedure for the treatment of a uterine fibroid that was performed upon her on March 6, 2012 in New Haven, Connecticut.

9. Defendant KARL STORZ ENDOSCOPY-AMERICA, INC. [hereinafter referred to as "KS Endoscopy"], is a California corporation with its principal place of business at 2151 E. Grand Avenue, El Segundo, CA, 90245 and has an agent authorized to accept service on its behalf within the State of California. At all times relevant herein, Defendant KS Endoscopy was engaged in the business of manufacturing, marketing, testing, promoting, selling and/or distributing Storz Morcellators.

10. Defendant KARL STORZ ENDOVISION, INC. [hereinafter referred to as "KS Endovision"] is a foreign corporation organized and existing under the laws of the State of Massachusetts, with its principal place of business in Charlton, Massachusetts. At all times relevant herein, Defendant KS Endovision has done and is doing business in California and has an agent authorized to accept service on its behalf within the State of California. At all times relevant herein, Defendant KS Endovision was engaged in the business of designing, manufacturing, marketing, testing, promoting, selling and/or distributing Storz Morcellators.

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1           11. Defendant KARL STORZ GMBH & CO. KG, A Business Entity Form Unknown,  
2 [hereinafter referred to as "Karl Storz"] is a foreign entity organized in Germany with its principal  
3 place of business at Dr. Karl-Storz-Straße 34, 78532 Tuttlingen, Germany. Upon information and  
4 belief, Defendant Karl Storz is the parent company of Defendants KS Endoscopy and KS  
5 Endovision. At all times relevant herein, Defendant Karl Storz was engaged in the business of  
6 designing, manufacturing, marketing, testing, promoting, selling and/or distributing Storz  
7 Morcellators in various countries and states including the State of California.

8           12. Plaintiffs are informed and believe and, based upon such information and belief,  
9 allege that Defendants KS Endoscopy and KS Endovision have purposefully availed themselves of  
10 the benefits of doing business in the State of California through their designing, manufacturing,  
11 marketing, testing, promoting, selling and/or distributing of the Storz Morcellator, by placing it into  
12 the stream of commerce for those purposes, and by promoting, selling and intending its use for the  
13 surgery of Plaintiff JOANNE MURPHY in the State of California and on Plaintiff LISA M.  
14 MISKELLA in the State of Connecticut. Since both Defendants KS Endoscopy and KS Endovision  
15 are the alter egos of Defendant Karl Storz, all of the above activities are imputed to and ratified by  
16 Defendant Karl Storz as well.

17           13. The true names or capacities, whether individual, corporate, associate, or otherwise  
18 of Defendant DOES 1 through 1000, inclusive, and each of them, are unknown to Plaintiffs who,  
19 therefore, sue said Defendants by such fictitious names. Plaintiffs are informed and believe and,  
20 based upon such information and belief, allege that each of said Defendants designated herein as a  
21 DOE is responsible, in some manner, for the events and happenings herein referred to, and caused  
22 injury and damages thereby to the Plaintiff as herein alleged.

23           14. Plaintiffs are informed and believe and, based upon such information and belief,  
24 allege that at all times relevant herein the Defendants, and each of them, were the agents, servants,  
25 employees and joint venturers of each other and at all times herein mentioned each and all were  
26 acting within the course, scope and purpose of their respective agency, service, employment and  
27 joint venture relationships.

28 ///

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Attorneys at Law  
Beverly Hills, California

15. In the interest of clarity, this Complaint refers to Defendant KS Endoscopy, Defendant KS Endovision, Defendant Karl Storz and DOES 1 through 1000, inclusive, and each of them, collectively as "Defendants."

#### **VENUE AND JURISDICTION**

16. Venue is proper in the Superior Court of the County of Los Angeles, State of California pursuant to California *Code of Civil Procedure* § 395(a), in that Defendant KS Endoscopy is a California Corporation with its principal place of business at 2151 E. Grand Avenue, El Segundo, CA, 90245 and has been and still is doing business within the County of Los Angeles, State of California.

17. The Federal Courts do not have subject matter or removal jurisdiction over this cause and, therefore, it is not removable. Specifically, pursuant to 28 U.S.C. § 1441(b), this action is not removable and the Superior Court of the County of Los Angeles, State of California has jurisdiction of this case as Defendant KS Endoscopy is a California Corporation with its principal place of business at 2151 E. Grand Avenue, El Segundo, CA, 90245. In addition, no federal question is involved. As such, any removal of this case to federal court would be wrongful and fraudulent and done solely for the purposes of delay. Therefore, should one or more of the Defendants seek to improperly remove this case to federal court, the Plaintiffs will seek sanctions.

18. Any and all conditions precedent to the filing of this suit have been satisfied. This Court has jurisdiction of this cause because the Plaintiff seeks damages which are in excess of this Court minimum jurisdictional limits, Defendant KS Endoscopy is a California Corporation with its principal place of business at 2151 E. Grand Avenue, El Segundo, CA, 90245 and all other Defendants have and continue to engage in business in the State of California.

#### **DISCOVERY RULE AND FRAUDULENT CONCEALMENT**

19. The nature of Ms. Murphy's injuries and their relationship to Storz Morcellator use were inherently undiscoverable; and consequently, the discovery rule should be applied to toll the running of the statute of limitations. The causes of action arising from the utilization of a Storz

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1 Morcellator to power morcellate or cut into small fragments Ms. Murphy's uterus and fibroid during  
2 her laparoscopic supracervical hysterectomy did not and could not have accrued prior to the date of  
3 her injury because Plaintiff did not know and could not have known through the exercise of  
4 reasonable care and diligence of the existence of Plaintiff's claims against Defendants.

5 20. Further, prior to the date of her injuries, Plaintiff did not have knowledge of facts  
6 that would lead a reasonable, prudent person to make inquiry to discover Defendants' tortious  
7 conduct. Under appropriate application of the "discovery rule," Plaintiff's suit was filed within the  
8 applicable statutory limitations period because Plaintiff filed this lawsuit within three (3) years from  
9 the date of Plaintiff's discovery of the cause of her injury.

10 21. The nature of Ms. Miskella's injuries and their relationship to Storz Morcellator use  
11 were inherently undiscoverable; and consequently, the discovery rule should be applied to toll the  
12 running of the statute of limitations. The causes of action arising from the utilization of a Storz  
13 Morcellator to power morcellate or cut into small fragments Ms. Miskella's uterus and fibroid  
14 during her laparoscopic supracervical hysterectomy did not and could not have accrued prior to the  
15 date of her injury because Plaintiff did not know and could not have known through the exercise of  
16 reasonable care and diligence of the existence of Plaintiff's claims against Defendants.

17 22. Further, prior to the date of their respective injuries, neither Plaintiff had knowledge  
18 of facts that would lead a reasonable, prudent person to make inquiry to discover Defendants'  
19 tortious conduct. Under appropriate application of the "discovery rule," each Plaintiff's suit was  
20 filed within the applicable statutory limitations period because each Plaintiff filed this lawsuit  
21 within two (2) years from the date of their respective discovery of the cause of their respective  
22 injury.

23 23. Moreover, Defendants fraudulently concealed from Plaintiffs the nature of their  
24 respective injuries and the connection between the injuries and Storz Morcellators.

25  
26 **GENERAL ALLEGATIONS AS TO PLAINTIFF JOANNE MURPHY**

27 24. The causes of action alleged in this suit on behalf of Plaintiff JOANNE MURPHY  
28 arise from the personal injuries that were sustained by her as a direct and proximate result of the

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1 wrongful acts of the Defendants, and each of them. On or about December 18, 2010, Plaintiff  
2 JOANNE MURPHY underwent a laparoscopic supracervical hysterectomy for the treatment of  
3 uterine fibroids. The surgeon who performed the surgery utilized the Storz Morcellator to power  
4 morcellate or cut into small fragments Ms. Murphy's uterus and fibroids. Unfortunately, what was  
5 thought to be benign fibroids was in fact, a deadly uterine cancer known as endometrial stromal  
6 sarcoma ("ESS"). Ms. Murphy was diagnosed with ESS shortly after her surgery based upon the  
7 pathological analysis of the morcellated uterine tissues.

8 25. In cutting, shredding and fragmenting the uterus and fibroid within Ms. Murphy's  
9 body, the Storz Morcellator disseminated and seeded ESS cancer throughout her abdominal cavity  
10 thereby accelerating the spread of her cancer and worsening her long-term prognosis and the natural  
11 course of her cancer.

12 26. Had the Storz Morcellator not disseminated and seeded ESS cancer cells throughout  
13 Ms. Murphy's abdomen during the surgical procedure on December 18, 2010, she would have been  
14 timely and properly diagnosed based on the pathological analysis of tissue removed by more  
15 conservative surgical methods and would not have suffered the spread of ESS. The Storz  
16 Morcellator caused the widespread dissemination of this specific cancerous condition, causing  
17 grave injury to Ms. Murphy.

18 27. The Defendants had actual knowledge and constructive notice of and knew, or in the  
19 exercise of reasonable care should have known, of the risk of disseminating and seeding  
20 undiagnosed uterine cancers with the normal and customary use of the Storz Morcellator and failed  
21 to properly communicate those risks to physicians and/or patients, including Ms. Murphy and her  
22 surgeon.

23 28. Power morcellators are surgical instruments used in various types on laparoscopic  
24 surgeries, including gynecological procedures for the treatment of uterine fibroids. Power  
25 morcellators are used to cut, shred and fragment tissue to facilitate the tissue's removal through  
26 small incisions.

27 29. On or about July 26, 2006 the Defendants received 510(k) clearance by the United  
28 States Food and Drug Administration ("FDA") for their Rotocut G1 Electromechanical Morcellator,

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1 describing it as a "motorized, reusable surgical device system, intended for the morcellation and  
2 extracting of tissue during laparoscopic procedures in general surgery, gynecology and urology."

3 30. At all times relevant herein the Defendants promoted the Storz Morcellator as a safe  
4 and effective tool for its intended use, including the treatment of uterine fibroids. The Defendants,  
5 and each of them, knew or should have known of the risks of power morcellation for the treatment  
6 of uterine fibroids, including the risk of disseminating, seeding and upstaging uterine cancer outside  
7 the uterus.

8 31. On April 17, 2014 the FDA issued a safety communication discouraging the use of  
9 laparoscopic power morcellation during hysterectomy or myomectomy surgical procedures for  
10 uterine fibroids, stating that, "If laparoscopic power morcellation is performed in women with  
11 unsuspected uterine sarcoma, there is a risk that the procedure will spread the cancerous tissue  
12 within the abdomen and pelvis, significantly worsening the patient's likelihood of long-term  
13 survival." The FDA discouraged this practice because of this risk and the fact that "there is no  
14 reliable method for predicting whether a woman with fibroids may have a uterine sarcoma."

15 32. On November 24, 2014, the FDA updated its prior safety communication regarding  
16 power morcellators. Rather than merely discouraging power morcellation in the treatment of uterine  
17 fibroids, the FDA now warns against "the use of laparoscopic power morcellators in the majority of  
18 women undergoing myomectomy or hysterectomy for treatment of fibroids."

19 33. In its warning, the FDA stated that, "If laparoscopic power morcellation is performed  
20 in women with unsuspected uterine sarcoma, there is a risk that the procedure will spread the  
21 cancerous tissue within the abdomen and pelvis, significantly worsening the patient's long-term  
22 survival."

23 34. Notwithstanding that the Defendants, and each of them, prior to the announcement of  
24 the FDA in April 2014, had actual knowledge and constructive notice and knew or, in the exercise  
25 of reasonable care, should have known of the risks of disseminating, seeding and upstaging cancer  
26 by the use of their Storz Morcellator the Defendants, and each of them, failed to adequately warn  
27 physicians and/or patients, including Ms. Murphy and her surgeon, of the risks.

28 ///

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Beverly Hills, California

1           35. Power morcellators like the Storz Morcellator are not necessary for the treatment of  
2 uterine fibroids. Safer, reasonable and more feasible alternative methods of treating uterine fibroids  
3 that do not employ the use of a power morcellator exist and have existed for decades. For example,  
4 other surgical methods have long been widely used, and are still used, for the safe removal of the  
5 uterus and uterine fibroids including, but not limited to, vaginal hysterectomies and abdominal  
6 hysterectomies whereby the uterus can be removed intact rather than being fragmented by a power  
7 morcellator in such a way that cancer cells are disseminated, seeded and spread throughout the  
8 abdomen.

9           36. Other reasonable and more feasible alternative designs also existed including the  
10 surgical tissue bag method, which has been available since 1991, long before the Storz  
11 Morcellator was marketed, sold and used. The Defendants, and each of them, had actual  
12 knowledge and constructive notice and knew or, in the exercise of reasonable care, should have  
13 known that the use of the tissue bag could help prevent the dissemination, seeding and spread of  
14 malignant cells to healthy tissue in the body cavity, yet the Defendants, and each of them, failed  
15 to require concomitant use of the bag, or warn that failure to use the tissue bag can lead to the  
16 dissemination, seeding and spread of malignant cells and the subsequent development of cancer  
17 outside the uterus.

18           37. Plaintiff JOANNE MURPHY is informed and believes and, based upon such  
19 information and belief, alleges that as of the date of this filing the Storz Morcellator remains on the  
20 market.

21           38. Prior to and at the time of the design, manufacture, marketing and sale of the Storz  
22 Morcellator the Defendants, and each of them, had actual knowledge and constructive notice and  
23 knew, or in the exercise of reasonable care, should have known that they were producing defective  
24 devices capable of disseminating, seeding and upstaging malignancies when used as designed and  
25 intended for the treatment of uterine fibroids. Prior to and at the time of the design, manufacture,  
26 marketing and sale of the Storz Morcellator the Defendants, and each of them, had actual  
27 knowledge and constructive notice and, knew or, in the exercise of reasonable care, should have  
28 known that they were producing defective medical devices that were killing patients and/or injuring



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1 patients. Prior to and at the time of the design, manufacture, marketing and sale of the Storz  
2 Morcellator the Defendants, and each of them, had actual knowledge and constructive notice and  
3 knew or, in the exercise of reasonable care, should have known that the incidence of undiagnosed  
4 uterine cancers far exceeded what the Defendants were representing. Despite the foregoing, the  
5 Defendants, and each of them, have and continue to act with reckless and/or intentional disregard  
6 for the safety of patients and continue to this day to manufacture and sell Storz Morcellators,  
7 knowing that they can and do cause catastrophic injuries and deaths.

8 39. The Storz Morcellator is unreasonably dangerous because, as in the case of Plaintiff  
9 JOANNE MURPHY, it can disseminate, seed and upstage an undiagnosed uterine cancer leading to  
10 devastating metastatic cancer and death.

11 40. Plaintiff JOANNE MURPHY alleges that she is entitled to prejudgment interest on  
12 some of the damages that she has suffered as a direct and proximate result of the Defendants, and  
13 each of them, actions from the date of her surgery on December 18, 2010, up to and including the  
14 date of judgment, according to proof.

15  
16 **GENERAL ALLEGATIONS AS TO PLAINTIFF LISA MISKELLA**

17 41. This suit arises from the personal injuries that were sustained by Plaintiff LISA M.  
18 MISKELLA as a direct and proximate result of the wrongful acts of the Defendants, and each of  
19 them. On or about March 6, 2012, Plaintiff LISA M. MISKELLA underwent a laparoscopic  
20 supracervical hysterectomy for the treatment of a uterine fibroid. The surgeon who performed the  
21 surgery utilized the Storz Morcellator to power morcellate or cut into small fragments Ms.  
22 Miskella's uterus and fibroid. Unfortunately, what was thought to be a benign fibroid was in fact, a  
23 deadly uterine cancer known as endometrial stromal sarcoma ("ESS"). Ms. Miskella was diagnosed  
24 with ESS shortly after her surgery based upon the pathological analysis of the morcellated uterine  
25 tissues.

26 42. In cutting, shredding and fragmenting the uterus and fibroid within Ms. Miskella's  
27 body, the Storz Morcellator disseminated and seeded ESS cancer throughout her abdominal cavity  
28 thereby accelerating the spread of her cancer and worsening her long-term prognosis and the natural



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1 course of her cancer.

2 43. Had the Storz Morcellator not disseminated and seeded ESS cancer cells throughout  
3 Ms. Miskella's abdomen during the surgical procedure on March 6, 2012, she would have been  
4 timely and properly diagnosed based on the pathological analysis of tissue removed by more  
5 conservative surgical methods and would not have suffered the spread of ESS. The Storz  
6 Morcellator caused the widespread dissemination of this specific cancerous condition, causing  
7 grave injury to Ms. Miskella.

8 44. The Defendants had actual knowledge and constructive notice of and knew, or in the  
9 exercise of reasonable care should have known, of the risk of disseminating and seeding  
10 undiagnosed uterine cancers with the normal and customary use of the Storz Morcellator and failed  
11 to properly communicate those risks to physicians and/or patients, including Ms. Miskella and her  
12 surgeon.

13 45. Power morcellators are surgical instruments used in various types on laparoscopic  
14 surgeries, including gynecological procedures for the treatment of uterine fibroids. Power  
15 morcellators are used to cut, shred and fragment tissue to facilitate the tissue's removal through  
16 small incisions.

17 46. On or about July 26, 2006 the Defendants received 510(k) clearance by the United  
18 States Food and Drug Administration ("FDA") for their Rotocut G1 Electromechanical Morcellator,  
19 describing it as a "motorized, reusable surgical device system, intended for the morcellation and  
20 extracting of tissue during laparoscopic procedures in general surgery, gynecology and urology."

21 47. At all times relevant herein the Defendants promoted the Storz Morcellator as a safe  
22 and effective tool for its intended use, including the treatment of uterine fibroids. The Defendants,  
23 and each of them, knew or should have known of the risks of power morcellation for the treatment  
24 of uterine fibroids, including the risk of disseminating, seeding and upstaging uterine cancer outside  
25 the uterus.

26 48. On April 17, 2014 the FDA issued a safety communication discouraging the use of  
27 laparoscopic power morcellation during hysterectomy or myomectomy surgical procedures for  
28 uterine fibroids, stating that, "If laparoscopic power morcellation is performed in women with

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1 unsuspected uterine sarcoma, there is a risk that the procedure will spread the cancerous tissue  
2 within the abdomen and pelvis, significantly worsening the patient's likelihood of long-term  
3 survival." The FDA discouraged this practice because of this risk and the fact that "there is no  
4 reliable method for predicting whether a woman with fibroids may have a uterine sarcoma."

5 49. On November 24, 2014, the FDA updated its prior safety communication regarding  
6 power morcellators. Rather than merely discouraging power morcellation in the treatment of uterine  
7 fibroids, the FDA now warns against "the use of laparoscopic power morcellators in the majority of  
8 women undergoing myomectomy or hysterectomy for treatment of fibroids."

9 50. In its warning, the FDA stated that, "If laparoscopic power morcellation is performed  
10 in women with unsuspected uterine sarcoma, there is a risk that the procedure will spread the  
11 cancerous tissue within the abdomen and pelvis, significantly worsening the patient's long-term  
12 survival."

13 51. Notwithstanding that the Defendants, and each of them, prior to the announcement of  
14 the FDA in April 2014, had actual knowledge and constructive notice and knew or, in the exercise  
15 of reasonable care, should have known of the risks of disseminating, seeding and upstaging cancer  
16 by the use of their Storz Morcellator the Defendants, and each of them, failed to adequately warn  
17 physicians and/or patients, including Ms. Miskella and her surgeon, of the risks.

18 52. Power morcellators like the Storz Morcellator are not necessary for the treatment of  
19 uterine fibroids. Safer, reasonable and more feasible alternative methods of treating uterine fibroids  
20 that do not employ the use of a power morcellator exist and have existed for decades. For example,  
21 other surgical methods have long been widely used, and are still used, for the safe removal of the  
22 uterus and uterine fibroids including, but not limited to, vaginal hysterectomies and abdominal  
23 hysterectomies whereby the uterus can be removed intact rather than being fragmented by a power  
24 morcellator in such a way that cancer cells are disseminated, seeded and spread throughout the  
25 abdomen.

26 53. Other reasonable and more feasible alternative designs also existed including the  
27 surgical tissue bag method, which has been available since 1991, long before the Storz Morcellator  
28 was marketed, sold and used. The Defendants, and each of them, had actual knowledge and

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1 constructive notice and knew or, in the exercise of reasonable care, should have known that the use  
2 of the tissue bag could help prevent the dissemination, seeding and spread of malignant cells to  
3 healthy tissue in the body cavity, yet the Defendants, and each of them, failed to require  
4 concomitant use of the bag, or warn that failure to use the tissue bag can lead to the dissemination,  
5 seeding and spread of malignant cells and the subsequent development of cancer outside the uterus.

6 54. Plaintiff LISA M. MISKELLA is informed and believes and, based upon such  
7 information and belief, alleges that as of the date of this filing the Storz Morcellator remains on the  
8 market.

9 55. Prior to and at the time of the design, manufacture, marketing and sale of the Storz  
10 Morcellator the Defendants, and each of them, had actual knowledge and constructive notice and  
11 knew, or in the exercise of reasonable care, should have known that they were producing defective  
12 devices capable of disseminating, seeding and upstaging malignancies when used as designed and  
13 intended for the treatment of uterine fibroids. Prior to and at the time of the design, manufacture,  
14 marketing and sale of the Storz Morcellator the Defendants, and each of them, had actual  
15 knowledge and constructive notice and, knew or, in the exercise of reasonable care, should have  
16 known that they were producing defective medical devices that were killing patients and/or injuring  
17 patients. Prior to and at the time of the design, manufacture, marketing and sale of the Storz  
18 Morcellator the Defendants, and each of them, had actual knowledge and constructive notice and  
19 knew or, in the exercise of reasonable care, should have known that the incidence of undiagnosed  
20 uterine cancers far exceeded what the Defendants were representing. Despite the foregoing, the  
21 Defendants, and each of them, have and continue to act with reckless and/or intentional disregard  
22 for the safety of patients and continue to this day to manufacture and sell Storz Morcellators,  
23 knowing that they can and do cause catastrophic injuries and deaths.

24 56. The Storz Morcellator is unreasonably dangerous because, as in the case of Plaintiff  
25 LISA M. MISKELLA, it can disseminate, seed and upstage an undiagnosed uterine cancer leading  
26 to devastating metastatic cancer and death.

27 57. Plaintiff LISA M. MISKELLA alleges that she is entitled to prejudgment interest on  
28 some of the damages that she has suffered as a direct and proximate result of the Defendants, and

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1 each of them, actions from the date of her surgery on March 6, 2012, up to and including the date of  
2 judgment, according to proof.

3 **FIRST CAUSE OF ACTION**  
4 **Strict Products Liability – Failure to Warn**  
5 **by Plaintiff JOANNE MURPHY as Against All Defendants**

6 58. Plaintiff JOANNE MURPHY re-alleges and incorporates herein by reference each  
7 and every allegation set forth in the Nature of the Action as set forth in Paragraphs 1 through 2,  
8 inclusive, Parties as set forth in Paragraphs 5 through 6 and 9 through 15, inclusive, Venue and  
9 Jurisdiction as set forth in Paragraphs 16 through 18, inclusive, and the General Allegations as to  
10 Plaintiff JOANNE MURPHY as set forth in Paragraphs 24 through 40, inclusive as though fully set  
11 forth at this point.

12 59. The Storz Morcellator was defective and unreasonably dangerous when it left the  
13 possession of the Defendants because it did not contain adequate warnings that would have  
14 informed the ordinary user of the specific risks of harm that may be involved in the intended use of  
15 the Storz Morcellator including, but not limited to:

- 16 a. The difficulty of effectively diagnosing cancer prior to (or during) surgery  
17 with available diagnostic tools;
- 18 b. The actual prevalence of undiagnosed uterine cancers in women undergoing  
19 power morcellation;
- 20 c. The actual rates at which power morcellators disseminate and/or upstage  
21 cancer;
- 22 d. The fact that power morcellators are associated with worsened long-term  
23 medical outcomes than other fibroid treatments because of the risk of uterine  
24 cancer being spread and implanted by the use of the device;
- 25 e. The fact that in the event that cancer was discovered after power  
26 morcellation, staging and pathological diagnosis could be impeded, thus  
27 yielding a worsened prognosis and outcome for the patient;
- 28 f. The risks of spreading and upstaging cancer through the use of a Storz  
Morcellator leading to the need for additional treatment and procedures

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1 and/or the need for additional surgery as well as other severe and permanent  
2 health consequences, notwithstanding Defendants' knowledge of the  
3 increased risk of these injuries and side effects with the use of a Storz  
4 Morcellator over other forms of treatment

5 60. The use of the Storz Morcellator in Plaintiff JOANNE MURPHY's surgery was  
6 reasonably foreseeable as the Storz Morcellator was used in the manner for which Defendants  
7 intended.

8 61. Plaintiff JOANNE MURPHY could not, by the exercise of reasonable care, have  
9 discovered the defects herein mentioned and perceived her danger.

10 62. The Defendants, and each of them, as the manufacturers, designers, distributors  
11 and/or sellers of the Storz Morcellator are each held to the level of knowledge of an expert in the  
12 field.

13 63. Plaintiff JOANNE MURPHY, individually and through her physicians, reasonably  
14 relied upon the skill, superior knowledge and judgment of the Defendants, and each of them, in  
15 consenting to the use of the Storz Morcellator on December 18, 2010.

16 64. The warnings that were given by the Defendants, and each of them, were not  
17 sufficiently informative, accurate or clear.

18 65. The warnings that were given by the Defendants, and each of them, failed to  
19 properly warn physicians of the increased risks associated with the use of the Storz Morcellator  
20 subjecting Plaintiff JOANNE MURPHY to risks that exceeded the benefits of the product  
21 including, but not limited to, the risks of disseminating, spreading and/or upstaging cancer, the need  
22 for additional treatment and procedures and/or the need for additional surgery as well as other  
23 severe and permanent health consequences. The Defendants, and each of them, had a duty to warn  
24 the Plaintiff and her physicians of the dangers associated with the use of the Storz Morcellator.

25 66. Had Plaintiff JOANNE MURPHY received adequate warnings regarding the risks of  
26 the use of the Storz Morcellator, she would not have allowed it to be used in her surgery on  
27 December 18, 2010.

28 ///

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1           67. Plaintiff JOANNE MURPHY suffered injuries and damages that were proximately  
2 caused by the Defendants, and each of them, failure to warn when the Storz Morcellator was used as  
3 designed and intended in her laparoscopic supracervical hysterectomy on December 18, 2010.

4           68. As a sole, direct and proximate result of the above-described negligence, conduct  
5 and tortious acts and omissions of the Defendants, and each of them, Plaintiff JOANNE MURPHY  
6 was injured and hurt in her health, strength and activity, sustaining serious personal injuries to her  
7 body including, but not limited to, the dissemination, spread and upstaging of a deadly uterine  
8 cancer known as endometrial stromal sarcoma ("ESS") and other as-yet undiagnosed injuries all of  
9 which have required hospitalization and all of which continue to require medical care and treatment  
10 all to her general and non-economic damages in an amount which is in excess of this Court's  
11 minimum jurisdictional amount and which will be stated according to proof, pursuant to California  
12 *Code of Civil Procedure* § 425.10.

13           69. That as a further, direct and proximate result of the above-described negligence,  
14 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
15 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her  
16 laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was  
17 required to undergo and endure hospital and medical care and treatment all to her special and  
18 economic damages. Plaintiff JOANNE MURPHY is informed and believes and, based upon such  
19 information and belief, alleges that some of these injuries will be permanent, all to her special and  
20 economic damages in an amount which will be stated according to proof, pursuant to California  
21 *Code of Civil Procedure* § 425.10.

22           70. That as a further, direct and proximate result of the above-described negligence,  
23 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
24 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
25 laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was  
26 prevented from attending to her usual occupation. Plaintiff JOANNE MURPHY is informed and  
27 believes and, upon such information and belief, alleges that she will be prevented from attending to  
28 her usual occupation for a period of time in the future and that she has also sustained a loss of

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1 earning capacity, in addition to lost earnings, past and future. The exact amount of such past and  
2 future lost earnings and loss of earning capacity is unknown to Plaintiff JOANNE MURPHY.  
3 When said amounts are ascertained, Plaintiff JOANNE MURPHY will ask leave of Court to amend  
4 this Complaint and allege said amounts according to proof, pursuant to California *Code of Civil*  
5 *Procedure* § 425.10.

6 71. For these reasons the Defendants, and each of them, are strictly liable under  
7 applicable products liability law without regard to proof of negligence. The Defendants' failure to  
8 warn and/or instruct was a direct and proximate cause of Plaintiff JOANNE MURPHY's injuries.

9 **SECOND CAUSE OF ACTION**

10 **Negligence**

11 **by Plaintiff JOANNE MURPHY as Against All Defendants**

12 72. Plaintiff JOANNE MURPHY re-alleges and incorporates herein by reference each  
13 and every allegation set forth in the Nature of the Action as set forth in Paragraphs 1 through 2,  
14 inclusive, Parties as set forth in Paragraphs 5 through 6 and 9 through 15, inclusive, Venue and  
15 Jurisdiction as set forth in Paragraphs 16 through 18, inclusive, and the General Allegations as to  
16 Plaintiff JOANNE MURPHY as set forth in Paragraphs 24 through 40, inclusive as though fully set  
17 forth at this point.

18 73. The Defendants, and each of them, were negligent by failing to exercise reasonable  
19 care to prevent the Storz Morcellator from creating an unreasonable risk of harm to the persons  
20 who were reasonably expected to be affected by the Storz Morcellator while it was being used  
21 in the manner that the Defendants reasonably expected including, but not limited to, the  
22 Plaintiff.

23 74. The Defendants, and each of them, had a duty to exercise ordinary care in the design,  
24 manufacture, marketing sale and/or distribution of the Storz Morcellator into the stream of  
25 commerce to ensure that the Storz Morcellator was safe for its intended or reasonably foreseeable  
26 use, including, without limitation, a duty to assure that the Storz Morcellator did not cause women  
27 such as the Plaintiff to sustain injuries and damages from its known and knowable dangerous side  
28 effects, including the dissemination, seeding and upstaging of uterine cancer and death. The  
29 Defendants, and each of them, failed to exercise ordinary care in the design, manufacture,



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1 marketing, sale, testing, and distribution of the Storz Morcellator into interstate commerce in that  
2 the Defendants, and each of them, had actual knowledge and constructive notice and knew or, in the  
3 exercise of reasonable care, should have known that the Storz Morcellator created a high risk of  
4 dangerous side effects, including the dissemination, seeding and upstaging of uterine cancer and  
5 death.

6 75. More specifically, the Defendants, and each of them, negligence in the design,  
7 manufacture, marketing, testing and/or sale of the Storz Morcellator including, but not limited to:

- 8 a. Providing misleading, inadequate and/or insufficient warnings regarding the  
9 Storz Morcellator;
- 10 b. Failure to use due care in the design and manufacture of the Storz  
11 Morcellator;
- 12 c. Failure to conduct adequate and appropriate testing of the Storz Morcellator;
- 13 d. Failure to recognize the significance of their own testing and other testing  
14 which evidenced the increased risks, dangers and potential harm of power  
15 morcellation in the treatment of uterine fibroids;
- 16 e. Failure to respond promptly and appropriately to their own testing and other  
17 testing, which evidenced the increased risks, dangers and potential harm of  
18 power morcellation in the treatment of uterine fibroids;
- 19 f. Failure to use safer, alternative designs for the Storz Morcellator that existed  
20 and were economically feasible at all times relevant herein.
- 21 g. Failure to provide to the FDA with information or data relevant to the safety  
22 of the Storz Morcellator;
- 23 h. Failure to obtain easily accessible information or data relevant to the safety of  
24 the Storz Morcellator;
- 25 i. Failure to perform sufficient testing of the Storz Morcellator to confirm or  
26 ensure that it was safe for its intended use;
- 27 j. Failure to use due care to test and inspect the Storz Morcellator to determine  
28 its durability and functionality for the purpose for which it was intended;



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- 1 k. Failure to conduct adequate testing and post-marketing surveillance to
- 2 determine the safety of the Storz Morcellator;
- 3 l. Misrepresenting that the Storz Morcellator was safe for use in laparoscopic
- 4 uterine surgical procedures;
- 5 m. Inadequate and/or insufficient research into the safety of the Storz
- 6 Morcellator prior to marketing and sale;
- 7 n. Inadequate and/or insufficient monitoring or research regarding adverse
- 8 events;
- 9 o. Failure to list the dissemination, seeding and/or upstaging of uterine cancer as
- 10 an adverse event;
- 11 p. Failure to list death as an adverse event;
- 12 q. Failure to provide adequate training, knowledge or information to physicians,
- 13 distributors or sellers of the Storz Morcellator;
- 14 r. Marketing the Storz Morcellator for unsafe uses;
- 15 s. Failure to adequately warn individuals of the dangerous and lethal side
- 16 effects of the Storz Morcellator;
- 17 t. Failure to fulfill the standard of care required of a reasonable, prudent,
- 18 minimally invasive gynecological surgical products manufacturer engaged in
- 19 the manufacture of products used for uterine morcellation such as the Storz
- 20 Morcellator;
- 21 u. Failure to withdraw the Storz Morcellator from the market, restrict its use
- 22 and/or warn of its potential dangers;
- 23 v. Failure to disclose to the medical community in an appropriate and timely
- 24 manner, facts relative to the potential of the Storz Morcellator to be harmful
- 25 to humans, including its potential to disseminate, seed and upstage uterine
- 26 cancer;
- 27 w. Failure to provide updated information in the form of reports and statistics
- 28 and outcomes of studies to physicians, hospitals and other healthcare entities

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concerning the increased likelihood of disseminating, seeding and upstaging uterine cancer when such data was available and in their possession;

x. Disregarding the safety of the general public, including the Plaintiff to advance their own economic interests;

y. Designing the Storz Morcellator;

z. Making the Storz Morcellator;

aa. Inspecting and testing the Storz Morcellator;

bb. Packaging the Storz Morcellator;

cc. Concealing their full knowledge and experience regarding the dangers of the Storz Morcellator; and,

dd. Other and further particulars as will be proven at trial.

76. Plaintiff JOANNE MURPHY suffered injuries and damages that were directly and proximately caused by the negligent conduct of the Defendants, and each of them, as a result of the use of the Storz Morcellator during the Plaintiff's laparoscopic hysterectomy on December 18, 2010.

77. As a sole, direct and proximate result of the above-described negligence, conduct and tortious acts and omissions of the Defendants, and each of them, Plaintiff JOANNE MURPHY was injured and hurt in her health, strength and activity, sustaining serious personal injuries to her body including, but not limited to, the dissemination, spread and upstaging of a deadly uterine cancer known as endometrial stromal sarcoma ("ESS") and other as-yet undiagnosed injuries all of which have required hospitalization and all of which continue to require medical care and treatment all to her general and non-economic damages in an amount which is in excess of this Court's minimum jurisdictional amount and which will be stated according to proof, pursuant to California *Code of Civil Procedure* § 425.10.

78. That as a further, direct and proximate result of the above-described negligence, conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was

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1 required to undergo and endure hospital and medical care and treatment all to her special and  
2 economic damages. Plaintiff JOANNE MURPHY is informed and believes and, based upon such  
3 information and belief, alleges that some of these injuries will be permanent, all to her special and  
4 economic damages in an amount which will be stated according to proof, pursuant to California  
5 *Code of Civil Procedure* § 425.10.

6 79. That as a further, direct and proximate result of the above-described negligence,  
7 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
8 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
9 laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was  
10 prevented from attending to her usual occupation. Plaintiff JOANNE MURPHY is informed and  
11 believes and, upon such information and belief, alleges that she will be prevented from attending to  
12 her usual occupation for a period of time in the future and that she has also sustained a loss of  
13 earning capacity, in addition to lost earnings, past and future. The exact amount of such past and  
14 future lost earnings and loss of earning capacity is unknown to Plaintiff JOANNE MURPHY.  
15 When said amounts are ascertained, Plaintiff JOANNE MURPHY will ask leave of Court to amend  
16 this Complaint and allege said amounts according to proof, pursuant to California *Code of Civil*  
17 *Procedure* § 425.10.

### 18 **THIRD CAUSE OF ACTION**

#### 19 **Gross Negligence**

20 **by Plaintiff JOANNE MURPHY as Against All Defendants)**

21 80. Plaintiff JOANNE MURPHY re-alleges and incorporates herein by reference each  
22 and every allegation set forth in the Nature of the Action as set forth in Paragraphs 1 through 2,  
23 inclusive, Parties as set forth in Paragraphs 5 through 6 and 9 through 15, inclusive, Venue and  
24 Jurisdiction as set forth in Paragraphs 16 through 18, inclusive, and the General Allegations as to  
25 Plaintiff JOANNE MURPHY as set forth in Paragraphs 24 through 40, inclusive as though fully set  
26 forth at this point. .

27 81. Plaintiff JOANNE MURPHY suffered injuries and damages that were proximately  
28 caused by the gross negligence of the Defendants, and each of them, related to the Storz Morcellator  
which was used during Plaintiff JOANNE MURPHY's laparoscopic supracervical hysterectomy on

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1 December 18, 2010.

2 82. Prior to and at the time that the laparoscopic uterine surgery utilizing the Storz  
3 Morcellator that was performed on Plaintiff JOANNE MURPHY on December 18, 2010, the  
4 Defendants, and each of them, had constructive notice and actual knowledge and knew or, in the  
5 exercise of reasonable care, should have known that the use of the Storz Morcellator caused  
6 dangerous side effects, including the dissemination, seeding and upstaging of uterine cancer and  
7 that its continued use would endanger the safety and well-being of members of the public including,  
8 but not limited to the Plaintiff.

9 83. Notwithstanding such actual knowledge and constructive notice, the Defendants, and  
10 each of them, purposefully and with conscious disregard for the safety of Plaintiff JOANNE  
11 MURPHY and others similarly situated, designed, manufactured, marketed and/or sold Storz  
12 Morcellators that they knew to be deadly when used for the treatment of uterine fibroids. The  
13 Defendants, and each of them, did everything in their power to suppress the truth about the deadly  
14 effects of the defective Storz Morcellator. The Defendants, and each of them, intentionally  
15 misrepresented the Storz Morcellator by marketing them to Plaintiff JOANNE MURPHY and her  
16 physicians as safe, and by failing to disclose the serious side effects that the Defendants had actual  
17 knowledge and constructive notice of, knew or, in the exercise of reasonable care, should have  
18 known about. The Defendants, and each of them, maliciously and fraudulently continued to design,  
19 manufacture, market, distribute and sell the Storz Morcellator with conscious disregard of the fact  
20 that people were being gravely injured and killed by the use of Storz Morcellators in laparoscopic  
21 hysterectomies such as the procedure performed on the Plaintiff on December 18, 2010.

22 84. As a sole, direct and proximate result of the above-described negligence, conduct  
23 and tortious acts and omissions of the Defendants, and each of them, Plaintiff JOANNE MURPHY  
24 was injured and hurt in her health, strength and activity, sustaining serious personal injuries to her  
25 body including, but not limited to, the dissemination, spread and upstaging of a deadly uterine  
26 cancer known as endometrial stromal sarcoma (:ESS") and other as-yet undiagnosed injuries all of  
27 which have required hospitalization and all of which continue to require medical care and treatment  
28 all to her general and non-economic damages in an amount which is in excess of this Court's

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1 minimum jurisdictional amount and which will be stated according to proof, pursuant to California  
2 *Code of Civil Procedure* § 425.10.

3 85. That as a further, direct and proximate result of the above-described negligence,  
4 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
5 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her  
6 laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was  
7 required to undergo and endure hospital and medical care and treatment all to her special and  
8 economic damages. Plaintiff JOANNE MURPHY is informed and believes and, based upon such  
9 information and belief, alleges that some of these injuries will be permanent, all to her special and  
10 economic damages in an amount which will be stated according to proof, pursuant to California  
11 *Code of Civil Procedure* § 425.10.

12 86. That as a further, direct and proximate result of the above-described negligence,  
13 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
14 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
15 laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was  
16 prevented from attending to her usual occupation. Plaintiff JOANNE MURPHY is informed and  
17 believes and, upon such information and belief, alleges that she will be prevented from attending to  
18 her usual occupation for a period of time in the future and that she has also sustained a loss of  
19 earning capacity, in addition to lost earnings, past and future. The exact amount of such past and  
20 future lost earnings and loss of earning capacity is unknown to Plaintiff JOANNE MURPHY.  
21 When said amounts are ascertained, Plaintiff JOANNE MURPHY will ask leave of Court to amend  
22 this Complaint and allege said amounts according to proof, pursuant to California *Code of Civil*  
23 *Procedure* § 425.10.

24 87. In doing the foregoing acts, the Defendants, and each of them, acted with malice as  
25 defined by California *Civil Code* § 3288, with willful and wanton negligence and in conscious  
26 disregard of the safety and well-being of others including, but not limited to, Plaintiff JOANNE  
27 MURPHY. Such conduct qualifies as despicable conduct as that term is defined in California *Civil*  
28 *Code* § 3294, warranting the imposition of punitive or exemplary damages against the Defendants,

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1 and each of them, in order to set an example of them, and to dissuade them from future reckless and  
2 illegal conduct, in amounts according to proof at trial. Specifically, at all times relevant herein,  
3 Defendants:

- 4 a. Knew that the Storz Morcellator was dangerous and defective;
- 5 b. Concealed the dangers and health risks from Plaintiff JOANNE MURPHY,  
6 Plaintiff's physicians and the public;
- 7 c. Made misrepresentations to Plaintiff JOANNE MURPHY, her physicians  
8 and the public regarding the safety of the Storz Morcellator; and
- 9 d. With full knowledge of the health risks associated with the Storz  
10 Morcellator and without adequate warnings of the same, manufactured,  
11 marketed, promoted, developed, sold and/or distributed the Storz  
12 Morcellator for routine use.

13 88. Defendants, by and through officers, directors, managing agents, authorized sales  
14 representatives, employees and/or other agents who engaged in malicious, fraudulent and  
15 oppressive conduct towards Plaintiff and the public, acted will willful and wanton and/or conscious  
16 and reckless disregard for the safety of Plaintiff and the general public.

17 **FOURTH CAUSE OF ACTION**  
18 **Negligent Misrepresentation**  
19 **by Plaintiff JOANNE MURPHY as Against All Defendants)**

20 89. Plaintiff JOANNE MURPHY re-alleges and incorporates herein by reference each  
21 and every allegation set forth in the Nature of the Action as set forth in Paragraphs 1 through 2,  
22 inclusive, Parties as set forth in Paragraphs 5 through 6 and 9 through 15, inclusive, Venue and  
23 Jurisdiction as set forth in Paragraphs 16 through 18, inclusive, and the General Allegations as to  
24 Plaintiff JOANNE MURPHY as set forth in Paragraphs 24 through 40, inclusive as though fully set  
25 forth at this point.

26 90. The Defendants, and each of them, represented and marketed the Storz Morcellator  
27 as being safe and effective. Notwithstanding that they had actual knowledge and constructive notice  
28 and knew or, in the exercise of reasonable care, should have known of the risk of using the Storz  
Morcellator for the treatment of uterine fibroids the Defendants, and each of them, failed to

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1 communicate to the FDA, the Plaintiff, physicians, distributors, hospitals, and/or the general public,  
2 that use of the Storz Morcellator could cause serious injury and/or death. The Defendants, and each  
3 of them, instead communicated and continued to communicate to all such persons/entities that the  
4 Storz Morcellator was safe for use. Specifically, the Defendants' misrepresentations include,  
5 without limitation, a representation to Plaintiff JOANNE MURPHY and to her physicians that the  
6 Storz Morcellator was a safe and effective surgical instrument for the treatment of uterine fibroids.

7 91. The Defendants, and each of them, through their agents, representatives, distributors  
8 and/or employees negligently misrepresented the Storz Morcellator, its alleged benefits and its  
9 known and knowable risks and dangers in the following ways:

- 10 a. The Defendants, and each of them, failed to warn of the defective condition  
11 of the Storz Morcellator, as manufactured and/or supplied by the Defendants,  
12 and each of them;
- 13 b. The Defendants, and each of them, negligently misrepresented material facts  
14 about the Storz Morcellator in the course of their business in that they made  
15 such misrepresentations when they had actual knowledge and constructive  
16 notice and knew or, in the exercise of reasonable care, should have known of  
17 the falsity of such misrepresentations without exercising reasonable care to  
18 ascertain the accuracy of these representations;
- 19 c. The above misrepresentations were made to the FDA, Plaintiff JOANNE  
20 MURPHY, physicians and hospitals, as well as to the general public;
- 21 d. The Defendants, and each of them, supplied false information regarding the  
22 safety and efficacy of the Storz Morcellator for the guidance of others,  
23 including the Plaintiff and her physicians;
- 24 e. The Defendants, and each of them, failed to exercise reasonable care or  
25 competence in obtaining or communicating information regarding the safety  
26 and efficacy of the Storz Morcellator to Plaintiff JOANNE MURPHY, her  
27 physicians and others;

28 ///



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1                   f.     The Plaintiff and others justifiably relied on the misrepresentations of the  
2                   Defendants, and each of them.

3           92.     Plaintiff JOANNE MURPHY suffered injuries and damages that were proximately  
4     caused by the Defendants' negligent misrepresentations related to the Storz Morcellator that was  
5     used in the Plaintiff's laparoscopic supracervical hysterectomy on December 18, 2010.

6           93.     As a sole, direct and proximate result of the above-described negligence, conduct  
7     and tortious acts and omissions of the Defendants, and each of them, Plaintiff JOANNE MURPHY  
8     was injured and hurt in her health, strength and activity, sustaining serious personal injuries to her  
9     body including, but not limited to, the dissemination, spread and upstaging of a deadly uterine  
10    cancer known as endometrial stromal sarcoma ("ESS") and other as-yet undiagnosed injuries all of  
11    which have required hospitalization and all of which continue to require medical care and treatment  
12    all to her general and non-economic damages in an amount which is in excess of this Court's  
13    minimum jurisdictional amount and which will be stated according to proof, pursuant to California  
14    *Code of Civil Procedure* § 425.10.

15          94.     That as a further, direct and proximate result of the above-described negligence,  
16    conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
17    sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her  
18    laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was  
19    required to undergo and endure hospital and medical care and treatment all to her special and  
20    economic damages. The Plaintiff is informed and believes and, based upon such information and  
21    belief, alleges that some of these injuries will be permanent, all to her special and economic  
22    damages in an amount which will be stated according to proof, pursuant to California *Code of Civil*  
23    *Procedure* § 425.10.

24          95.     That as a further, direct and proximate result of the above-described negligence,  
25    conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
26    sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
27    laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was  
28    prevented from attending to her usual occupation. Plaintiff JOANNE MURPHY is informed and



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1 believes and, upon such information and belief, alleges that she will be prevented from attending to  
2 her usual occupation for a period of time in the future and that she has also sustained a loss of  
3 earning capacity, in addition to lost earnings, past and future. The exact amount of such past and  
4 future lost earnings and loss of earning capacity is unknown to Plaintiff JOANNE MURPHY.  
5 When said amounts are ascertained, Plaintiff JOANNE MURPHY will ask leave of Court to amend  
6 this Complaint and allege said amounts according to proof, pursuant to California *Code of Civil*  
7 *Procedure* § 425.10.

8 **FIFTH CAUSE OF ACTION**  
9 **Fraudulent Concealment**  
10 **by Plaintiff JOANNE MURPHY as Against All Defendants**

11 96. The Plaintiff re-alleges and incorporates herein by reference each and every  
12 allegation set forth in the Nature of the Action as set forth in Paragraphs 1 through 2, inclusive,  
13 Parties as set forth in Paragraphs 3 through 11, inclusive, Venue and Jurisdiction as set forth in  
14 Paragraphs 12 through 15, inclusive, and the General Allegations as set forth in Paragraphs 16  
15 through 32, inclusive as though fully set forth at this point.

16 97. The Defendants, and each of them, had actual knowledge and constructive notice and  
17 knew or, in the exercise of reasonable care, should have known that their Storz Morcellators were  
18 disseminating, seeding and upstaging undiagnosed uterine cancers thereby gravely and irreparably  
19 injuring women such as Plaintiff JOANNE MURPHY. Further, the Defendants, and each of them,  
20 had actual knowledge and constructive notice and knew or, in the exercise of reasonable care,  
21 should have known that power morcellators used for the treatment of uterine fibroids were  
22 disseminating, seeding and upstaging uterine cancer at an alarmingly higher rate than they  
23 acknowledged and represented.

24 98. Notwithstanding their actual knowledge and constructive notice of the foregoing the  
25 Defendants, and each of them, nevertheless intentionally withheld from Plaintiff JOANNE  
26 MURPHY and her healthcare providers the knowledge that the Storz Morcellator could  
27 disseminate, seed and upstage uterine cancer thereby causing grave and irreparable injury.

28 99. The Defendants, and each of them, had actual knowledge and constructive notice and  
knew or, in the exercise of reasonable care, should have known that Plaintiff JOANNE MURPHY

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1 and others similarly situated could be gravely and irreparably harmed by the use of the Storz  
2 Morcellator, yet the Defendants, and each of them, intentionally withheld material facts from the  
3 Plaintiff and her healthcare providers, including the fact that the Storz Morcellator could  
4 disseminate, seed and upstage uterine cancer and the number of women statistically likely to present  
5 for the treatment of uterine fibroids with undiagnosed uterine cancer.

6 100. The Defendants, and each of them, had actual knowledge and constructive notice and  
7 knew and failed to disclose information and suppressed information as alleged herein with the  
8 fraudulent intent to induce Plaintiff JOANNE MURPHY and her healthcare providers to act in  
9 reliance thereon.

10 101. Had Plaintiff JOANNE MURPHY and/or her healthcare providers been aware of the  
11 existence of the facts known to but not disclosed and actively suppressed by the Defendants, and  
12 each of them, Plaintiff JOANNE MURPHY would have elected to treat her uterine fibroid(s)  
13 without the use of the Storz Morcellator.

14 102. The fraudulent concealment of facts and suppression of information by the  
15 Defendants, and each of them, was a direct and proximate cause of Plaintiff JOANNE MURPHY's  
16 injuries as a result of the Storz Morcellator that was used in Plaintiff JOANNE MURPHY's  
17 laparoscopic supracervical hysterectomy on December 18, 2010.

18 103. Prior to and at the time that the laparoscopic uterine surgery utilizing the Storz  
19 Morcellator that was performed on Plaintiff JOANNE MURPHY on December 18, 2010, the  
20 Defendants, and each of them, had actual knowledge and constructive notice and knew that the use  
21 of the Storz Morcellator caused dangerous side effects, including the dissemination, seeding and  
22 upstaging of uterine cancer and death and that its continued use would endanger the safety and well-  
23 being of members of the public including, but not limited to Plaintiff JOANNE MURPHY.

24 104. Notwithstanding such actual knowledge and constructive notice, the Defendants, and  
25 each of them, purposefully and with conscious disregard for the safety of Plaintiff JOANNE  
26 MURPHY and others similarly situated fraudulently concealed their actual knowledge and  
27 constructive notice that Storz Morcellators could be deadly when used for the treatment of uterine  
28 fibroids. The Defendants, and each of them, did everything in their power to fraudulently conceal

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1 and suppress the truth about the deadly effects of the defective Storz Morcellator. The Defendants,  
2 and each of them, fraudulently concealed their actual knowledge and constructive notice that the use  
3 of the Storz Morcellator in laparoscopic hysterectomies created serious side effects. The  
4 Defendants, and each of them, maliciously and fraudulently concealed the fact that people were  
5 being gravely injured and killed by the use of Storz Morcellators in laparoscopic hysterectomies  
6 such as the procedure performed on the Plaintiff on December 18, 2010.

7 105. As a sole, direct and proximate result of the above-described negligence, conduct  
8 and tortious acts and omissions of the Defendants, and each of them, Plaintiff JOANNE MURPHY  
9 was injured and hurt in her health, strength and activity, sustaining serious personal injuries to her  
10 body including, but not limited to, the dissemination, spread and upstaging of a deadly uterine  
11 cancer known as endometrial stromal sarcoma ("ESS") and other as-yet undiagnosed injuries all of  
12 which have required hospitalization and all of which continue to require medical care and treatment  
13 all to her general and non-economic damages in an amount which is in excess of this Court's  
14 minimum jurisdictional amount and which will be stated according to proof, pursuant to California  
15 *Code of Civil Procedure* § 425.10.

16 106. That as a further, direct and proximate result of the above-described negligence,  
17 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
18 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her  
19 laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was  
20 required to undergo and endure hospital and medical care and treatment all t her special and  
21 economic damages. The Plaintiff is informed and believes and, based upon such information and  
22 belief, alleges that some of these injuries will be permanent, all to her special and economic  
23 damages in an amount which will be stated according to proof, pursuant to California *Code of Civil*  
24 *Procedure* § 425.10.

25 107. That as a further, direct and proximate result of the above-described negligence,  
26 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
27 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
28 laparoscopic supracervical hysterectomy on December 18, 2010, Plaintiff JOANNE MURPHY was

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1 prevented from attending to her usual occupation. Plaintiff JOANNE MURPHY is informed and  
2 believes and, upon such information and belief, alleges that she will be prevented from attending to  
3 her usual occupation for a period of time in the future and that she has also sustained a loss of  
4 earning capacity, in addition to lost earnings, past and future. The exact amount of such past and  
5 future lost earnings and loss of earning capacity is unknown to Plaintiff JOANNE MURPHY.  
6 When said amounts are ascertained, Plaintiff JOANNE MURPHY will ask leave of Court to amend  
7 this Complaint and allege said amounts according to proof, pursuant to California *Code of Civil*  
8 *Procedure* § 425.10.

9 108. In doing the foregoing acts, the Defendants, and each of them, acted with malice as  
10 defined by California *Civil Code* § 3288, with willful and wanton negligence and in conscious  
11 disregard of the safety and well-being of others including, but not limited to, Plaintiff JOANNE  
12 MURPHY. Such conduct qualifies as despicable conduct as that term is defined in California *Civil*  
13 *Code* § 3294, warranting the imposition of punitive or exemplary damages against the Defendants,  
14 and each of them, in order to set an example of them, and to dissuade them from future reckless and  
15 illegal conduct, in amounts according to proof at trial. Specifically, at all times relevant herein,  
16 Defendants:

- 17 a. Knew that the Storz Morcellator was dangerous and defective;
- 18 b. Concealed the dangers and health risks from Plaintiff, Plaintiff's physicians  
19 and the public;
- 20 c. Made misrepresentations to Plaintiff JOANNE MURPHY, her physicians  
21 and the public regarding the safety of the Storz Morcellator; and
- 22 d. With full knowledge of the health risks associated with the Storz  
23 Morcellator and without adequate warnings of the same, manufactured,  
24 marketed, promoted, developed, sold and/or distributed the Storz  
25 Morcellator for routine use.

26 109. Defendants, by and through officers, directors, managing agents, authorized sales  
27 representatives, employees and/or other agents who engaged in malicious, fraudulent and  
28 oppressive conduct towards Plaintiff and the public, acted will willful and wanton and/or conscious

1 and reckless disregard for the safety of Plaintiff JOANNE MURPHY and the general public.

2 **SIXTH CAUSE OF ACTION**  
 3 **Strict Products Liability – Failure to Warn**  
 4 **by Plaintiff LISA M. MISKELLA as Against All Defendants**

5 110. Plaintiff LISA M. MISKELLA re-alleges and incorporates herein by reference each  
 6 and every allegation set forth in the Nature of the Action as set forth in Paragraphs 3 through 4,  
 7 inclusive, Parties as set forth in Paragraphs 7 through 15, inclusive, Venue and Jurisdiction as set  
 8 forth in Paragraphs 16 through 18, inclusive, and the General Allegations as set forth in Paragraphs  
 9 41 through 57, inclusive as though fully set forth at this point.

10 111. The Storz Morcellator was defective and unreasonably dangerous when it left the  
 11 possession of the Defendants because it did not contain adequate warnings that would have  
 12 informed the ordinary user of the specific risks of harm that may be involved in the intended use of  
 13 the Storz Morcellator including, but not limited to:

- 14 a. The difficulty of effectively diagnosing cancer prior to (or during) surgery  
 15 with available diagnostic tools;
- 16 b. The actual prevalence of undiagnosed uterine cancers in women undergoing  
 17 power morcellation;
- 18 c. The actual rates at which power morcellators disseminate and/or upstage  
 19 cancer;
- 20 d. The fact that power morcellators are associated with worsened long-term  
 21 medical outcomes than other fibroid treatments because of the risk of uterine  
 22 cancer being spread and implanted by the use of the device;
- 23 e. The fact that in the event that cancer was discovered after power  
 24 morcellation, staging and pathological diagnosis could be impeded, thus  
 25 yielding a worsened prognosis and outcome for the patient;
- 26 f. The risks of spreading and upstaging cancer through the use of a Storz  
 27 Morcellator leading to the need for additional treatment and procedures  
 28 and/or the need for additional surgery as well as other severe and permanent  
 health consequences, notwithstanding Defendants' knowledge of the

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1 increased risk of these injuries and side effects with the use of a Storz  
2 Morcellator over other forms of treatment

3 112. The use of the Storz Morcellator in Plaintiff LISA M. MISKELLA's surgery was  
4 reasonably foreseeable as the Storz Morcellator was used in the manner for which Defendants  
5 intended.

6 113. Plaintiff LISA M. MISKELLA could not, by the exercise of reasonable care, have  
7 discovered the defects herein mentioned and perceived her danger.

8 114. The Defendants, and each of them, as the manufacturers, designers, distributors  
9 and/or sellers of the Storz Morcellator are each held to the level of knowledge of an expert in the  
10 field.

11 115. Plaintiff LISA M. MISKELLA, individually and through her physicians, reasonably  
12 relied upon the skill, superior knowledge and judgment of the Defendants, and each of them, in  
13 consenting to the use of the Storz Morcellator on March 6, 2012.

14 116. The warnings that were given by the Defendants, and each of them, were not  
15 sufficiently informative, accurate or clear.

16 117. The warnings that were given by the Defendants, and each of them, failed to  
17 properly warn physicians of the increased risks associated with the use of the Storz Morcellator  
18 subjecting Plaintiff LISA M. MISKELLA to risks that exceeded the benefits of the product  
19 including, but not limited to, the risks of disseminating, spreading and/or upstaging cancer, the need  
20 for additional treatment and procedures and/or the need for additional surgery as well as other  
21 severe and permanent health consequences. The Defendants, and each of them, had a duty to warn  
22 Plaintiff LISA M. MISKELLA and her physicians of the dangers associated with the use of the  
23 Storz Morcellator.

24 118. Had Plaintiff LISA M. MISKELLA received adequate warnings regarding the risks  
25 of the use of the Storz Morcellator, she would not have allowed it to be used in her surgery on  
26 March 6, 2012.

27 119. Plaintiff LISA M. MISKELLA suffered injuries and damages that were proximately  
28 caused by the Defendants, and each of them, failure to warn when the Storz Morcellator was used as

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1 designed and intended in her laparoscopic supracervical hysterectomy on March 6, 2012.

2       120. As a sole, direct and proximate result of the above-described negligence, conduct  
3 and tortious acts and omissions of the Defendants, and each of them, Plaintiff LISA M. MISKELLA  
4 was injured and hurt in her health, strength and activity, sustaining serious personal injuries to her  
5 body including, but not limited to, the dissemination, spread and upstaging of a deadly uterine  
6 cancer known as endometrial stromal sarcoma ("ESS") and other as-yet undiagnosed injuries all of  
7 which have required hospitalization and all of which continue to require medical care and treatment  
8 all to her general and non-economic damages in an amount which is in excess of this Court's  
9 minimum jurisdictional amount and which will be stated according to proof, pursuant to California  
10 *Code of Civil Procedure* § 425.10.

11       121. That as a further, direct and proximate result of the above-described negligence,  
12 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
13 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her  
14 laparoscopic supracervical hysterectomy on March 6, 2012, Plaintiff LISA M. MISKELLA was  
15 required to undergo and endure hospital and medical care and treatment all to her special and  
16 economic damages. Plaintiff LISA M. MISKELLA is informed and believes and, based upon such  
17 information and belief, alleges that some of these injuries will be permanent, all to her special and  
18 economic damages in an amount which will be stated according to proof, pursuant to California  
19 *Code of Civil Procedure* § 425.10.

20       122. That as a further, direct and proximate result of the above-described negligence,  
21 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
22 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
23 laparoscopic supracervical hysterectomy on March 6, 2012, Plaintiff LISA M. MISKELLA was  
24 prevented from attending to her usual occupation. Plaintiff LISA M. MISKELLA is informed and  
25 believes and, upon such information and belief, alleges that she will be prevented from attending to  
26 her usual occupation for a period of time in the future and that she has also sustained a loss of  
27 earning capacity, in addition to lost earnings, past and future. The exact amount of such past and  
28 future lost earnings and loss of earning capacity is unknown to Plaintiff LISA M. MISKELLA.



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1 When said amounts are ascertained, Plaintiff LISA M. MISKELLA will ask leave of Court to  
2 amend this Complaint and allege said amounts according to proof, pursuant to California *Code of*  
3 *Civil Procedure* § 425.10

4 123. For these reasons the Defendants, and each of them, are strictly liable under  
5 applicable products liability law without regard to proof of negligence. The Defendants' failure to  
6 warn and/or instruct was a direct and proximate cause of Plaintiff LISA M. MISKELLA's injuries.

7 **SEVENTH CAUSE OF ACTION**

8 **Negligence**

9 **by Plaintiff LISA M. MISKELLA as Against All Defendants**

10 124. Plaintiff LISA M. MISKELLA re-alleges and incorporates herein by reference each  
11 and every allegation set forth in the Nature of the Action as set forth in Paragraphs 3 through 4,  
12 inclusive, Parties as set forth in Paragraphs 7 through 15, inclusive, Venue and Jurisdiction as set  
13 forth in Paragraphs 16 through 18, inclusive, and the General Allegations as set forth in Paragraphs  
14 41 through 57, inclusive as though fully set forth at this point.

15 125. The Defendants, and each of them, were negligent by failing to exercise reasonable  
16 care to prevent the Storz Morcellator from creating an unreasonable risk of harm to the persons who  
17 were reasonably expected to be affected by the Storz Morcellator while it was being used in the  
18 manner that the Defendants reasonably expected including, but not limited to, Plaintiff LISA M.  
19 MISKELLA.

20 126. The Defendants, and each of them, had a duty to exercise ordinary care in the design,  
21 manufacture, marketing sale and/or distribution of the Storz Morcellator into the stream of  
22 commerce to ensure that the Storz Morcellator was safe for its intended or reasonably foreseeable  
23 use, including, without limitation, a duty to assure that the Storz Morcellator did not cause women  
24 such as Plaintiff LISA M. MISKELLA to sustain injuries and damages from its known and  
25 knowable dangerous side effects, including the dissemination, seeding and upstaging of uterine  
26 cancer and death. The Defendants, and each of them, failed to exercise ordinary care in the design,  
27 manufacture, marketing, sale, testing, and distribution of the Storz Morcellator into interstate  
28 commerce in that the Defendants, and each of them, had actual knowledge and constructive notice  
and knew or, in the exercise of reasonable care, should have known that the Storz Morcellator



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1 created a high risk of dangerous side effects, including the dissemination, seeding and upstaging of  
2 uterine cancer and death.

3 127. More specifically, the Defendants, and each of them, negligence in the design,  
4 manufacture, marketing, testing and/or sale of the Storz Morcellator including, but not limited to:

- 5 a. Providing misleading, inadequate and/or insufficient warnings regarding the  
6 Storz Morcellator;
- 7 b. Failure to use due care in the design and manufacture of the Storz  
8 Morcellator;
- 9 c. Failure to conduct adequate and appropriate testing of the Storz Morcellator;
- 10 d. Failure to recognize the significance of their own testing and other testing  
11 which evidenced the increased risks, dangers and potential harm of power  
12 morcellation in the treatment of uterine fibroids;
- 13 e. Failure to respond promptly and appropriately to their own testing and other  
14 testing, which evidenced the increased risks, dangers and potential harm of  
15 power morcellation in the treatment of uterine fibroids;
- 16 f. Failure to use safer, alternative designs for the Storz Morcellator that existed  
17 and were economically feasible at all times relevant herein.
- 18 g. Failure to provide to the FDA with information or data relevant to the safety  
19 of the Storz Morcellator;
- 20 h. Failure to obtain easily accessible information or data relevant to the safety of  
21 the Storz Morcellator;
- 22 i. Failure to perform sufficient testing of the Storz Morcellator to confirm or  
23 ensure that it was safe for its intended use;
- 24 j. Failure to use due care to test and inspect the Storz Morcellator to determine  
25 its durability and functionality for the purpose for which it was intended;
- 26 k. Failure to conduct adequate testing and post-marketing surveillance to  
27 determine the safety of the Storz Morcellator;
- 28 l. Misrepresenting that the Storz Morcellator was safe for use in laparoscopic

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- 1 uterine surgical procedures;
- 2 m. Inadequate and/or insufficient research into the safety of the Storz
- 3 Morcellator prior to marketing and sale;
- 4 n. Inadequate and/or insufficient monitoring or research regarding adverse
- 5 events;
- 6 o. Failure to list the dissemination, seeding and/or upstaging of uterine cancer as
- 7 an adverse event;
- 8 p. Failure to list death as an adverse event;
- 9 q. Failure to provide adequate training, knowledge or information to physicians,
- 10 distributors or sellers of the Storz Morcellator;
- 11 r. Marketing the Storz Morcellator for unsafe uses;
- 12 s. Failure to adequately warn individuals of the dangerous and lethal side
- 13 effects of the Storz Morcellator;
- 14 t. Failure to fulfill the standard of care required of a reasonable, prudent,
- 15 minimally invasive gynecological surgical products manufacturer engaged in
- 16 the manufacture of products used for uterine morcellation such as the Storz
- 17 Morcellator;
- 18 u. Failure to withdraw the Storz Morcellator from the market, restrict its use
- 19 and/or warn of its potential dangers;
- 20 v. Failure to disclose to the medical community in an appropriate and timely
- 21 manner, facts relative to the potential of the Storz Morcellator to be harmful
- 22 to humans, including its potential to disseminate, seed and upstage uterine
- 23 cancer;
- 24 w. Failure to provide updated information in the form of reports and statistics
- 25 and outcomes of studies to physicians, hospitals and other healthcare entities
- 26 concerning the increased likelihood of disseminating, seeding and upstaging
- 27 uterine cancer when such data was available and in their possession;
- 28 x. Disregarding the safety of the general public, including the Plaintiff to

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advance their own economic interests;

y. Designing the Storz Morcellator;

z. Making the Storz Morcellator;

aa. Inspecting and testing the Storz Morcellator;

bb. Packaging the Storz Morcellator;

cc. Concealing their full knowledge and experience regarding the dangers of the Storz Morcellator; and,

dd. Other and further particulars as will be proven at trial.

128. Plaintiff LISA M. MISKELLA suffered injuries and damages that were directly and proximately caused by the negligent conduct of the Defendants, and each of them, as a result of the use of the Storz Morcellator during Plaintiff LISA M. MISKELLA's laparoscopic hysterectomy on March 6, 2012.

129. As a sole, direct and proximate result of the above-described negligence, conduct and tortious acts and omissions of the Defendants, and each of them, Plaintiff LISA M. MISKELLA was injured and hurt in her health, strength and activity, sustaining serious personal injuries to her body including, but not limited to, the dissemination, spread and upstaging of a deadly uterine cancer known as endometrial stromal sarcoma ("ESS") and other as-yet undiagnosed injuries all of which have required hospitalization and all of which continue to require medical care and treatment all to her general and non-economic damages in an amount which is in excess of this Court's minimum jurisdictional amount and which will be stated according to proof, pursuant to California Code of Civil Procedure § 425.10.

130. That as a further, direct and proximate result of the above-described negligence, conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her laparoscopic supracervical hysterectomy on March 6, 2012, Plaintiff LISA M. MISKELLA was required to undergo and endure hospital and medical care and treatment all to her special and economic damages. Plaintiff LISA M. MISKELLA is informed and believes and, based upon such information and belief, alleges that some of these injuries will be permanent, all to her special and

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1 economic damages in an amount which will be stated according to proof, pursuant to California  
2 *Code of Civil Procedure* § 425.10.

3 131. That as a further, direct and proximate result of the above-described negligence,  
4 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
5 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
6 laparoscopic supracervical hysterectomy on March 6, 2012, Plaintiff LISA M. MISKELLA was  
7 prevented from attending to her usual occupation. Plaintiff LISA M. MISKELLA is informed and  
8 believes and, upon such information and belief, alleges that she will be prevented from attending to  
9 her usual occupation for a period of time in the future and that she has also sustained a loss of  
10 earning capacity, in addition to lost earnings, past and future. The exact amount of such past and  
11 future lost earnings and loss of earning capacity is unknown to Plaintiff LISA M. MISKELLA.  
12 When said amounts are ascertained, Plaintiff LISA M. MISKELLA will ask leave of Court to  
13 amend this Complaint and allege said amounts according to proof, pursuant to California *Code of*  
14 *Civil Procedure* § 425.10.

15 **EIGHTH CAUSE OF ACTION**

16 **Gross Negligence**

17 **by Plaintiff LISA M. MISKELLA as Against All Defendants**

18 132. Plaintiff LISA M. MISKELLA re-alleges and incorporates herein by reference each  
19 and every allegation set forth in the Nature of the Action as set forth in Paragraphs 3 through 4,  
20 inclusive, Parties as set forth in Paragraphs 7 through 15, inclusive, Venue and Jurisdiction as set  
21 forth in Paragraphs 16 through 18, inclusive, and the General Allegations as set forth in Paragraphs  
22 41 through 57, inclusive as though fully set forth at this point.

23 133. Plaintiff LISA M. MISKELLA suffered injuries and damages that were proximately  
24 caused by the gross negligence of the Defendants, and each of them, related to the Storz Morcellator  
25 which was used during Plaintiff LISA M. MISKELLA's laparoscopic supracervical hysterectomy  
26 on March 6, 2012.

27 134. Prior to and at the time that the laparoscopic uterine surgery utilizing the Storz  
28 Morcellator that was performed on Plaintiff LISA M. MISKELLA on March 6, 2012, the  
Defendants, and each of them, had constructive notice and actual knowledge and knew or, in the

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1 exercise of reasonable care, should have known that the use of the Storz Morcellator caused  
2 dangerous side effects, including the dissemination, seeding and upstaging of uterine cancer and  
3 that its continued use would endanger the safety and well-being of members of the public including,  
4 but not limited to the Plaintiff.

5 135. Notwithstanding such actual knowledge and constructive notice, the Defendants, and  
6 each of them, purposefully and with conscious disregard for the safety of Plaintiff LISA M.  
7 MISKELLA and others similarly situated, designed, manufactured, marketed and/or sold Storz  
8 Morcellators that they knew to be deadly when used for the treatment of uterine fibroids. The  
9 Defendants, and each of them, did everything in their power to suppress the truth about the deadly  
10 effects of the defective Storz Morcellator. The Defendants, and each of them, intentionally  
11 misrepresented the Storz Morcellator by marketing them to Plaintiff LISA M. MISKELLA and her  
12 physicians as safe, and by failing to disclose the serious side effects that the Defendants had actual  
13 knowledge and constructive notice of, knew or, in the exercise of reasonable care, should have  
14 known about. The Defendants, and each of them, maliciously and fraudulently continued to design,  
15 manufacture, market, distribute and sell the Storz Morcellator with conscious disregard of the fact  
16 that people were being gravely injured and killed by the use of Storz Morcellators in laparoscopic  
17 hysterectomies such as the procedure performed on the Plaintiff on March 6, 2012.

18 136. As a sole, direct and proximate result of the above-described negligence, conduct  
19 and tortious acts and omissions of the Defendants, and each of them, Plaintiff LISA M. MISKELLA  
20 was injured and hurt in her health, strength and activity, sustaining serious personal injuries to her  
21 body including, but not limited to, the dissemination, spread and upstaging of a deadly uterine  
22 cancer known as endometrial stromal sarcoma (:ESS") and other as-yet undiagnosed injuries all of  
23 which have required hospitalization and all of which continue to require medical care and treatment  
24 all to her general and non-economic damages in an amount which is in excess of this Court's  
25 minimum jurisdictional amount and which will be stated according to proof, pursuant to California  
26 *Code of Civil Procedure* § 425.10.

27 137. That as a further, direct and proximate result of the above-described negligence,  
28 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries

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1 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her  
2 laparoscopic supracervical hysterectomy on March 6, 2012, Plaintiff LISA M. MISKELLA was  
3 required to undergo and endure hospital and medical care and treatment all to her special and  
4 economic damages. Plaintiff LISA M. MISKELLA is informed and believes and, based upon such  
5 information and belief, alleges that some of these injuries will be permanent, all to her special and  
6 economic damages in an amount which will be stated according to proof, pursuant to California  
7 *Code of Civil Procedure* § 425.10.

8 138. That as a further, direct and proximate result of the above-described negligence,  
9 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
10 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
11 laparoscopic supracervical hysterectomy on March 6, 2012, Plaintiff LISA M. MISKELLA was  
12 prevented from attending to her usual occupation. Plaintiff LISA M. MISKELLA is informed and  
13 believes and, upon such information and belief, alleges that she will be prevented from attending to  
14 her usual occupation for a period of time in the future and that she has also sustained a loss of  
15 earning capacity, in addition to lost earnings, past and future. The exact amount of such past and  
16 future lost earnings and loss of earning capacity is unknown to Plaintiff LISA M. MISKELLA.  
17 When said amounts are ascertained, Plaintiff LISA M. MISKELLA will ask leave of Court to  
18 amend this Complaint and allege said amounts according to proof, pursuant to California *Code of*  
19 *Civil Procedure* § 425.10.

20 139. In doing the foregoing acts, the Defendants, and each of them, acted with malice as  
21 defined by California *Civil Code* § 3288, with willful and wanton negligence and in conscious  
22 disregard of the safety and well-being of others including, but not limited to, Plaintiff LISA M.  
23 MISKELLA. Such conduct qualifies as despicable conduct as that term is defined in California  
24 *Civil Code* § 3294, warranting the imposition of punitive or exemplary damages against the  
25 Defendants, and each of them, in order to set an example of them, and to dissuade them from future  
26 reckless and illegal conduct, in amounts according to proof at trial. Specifically, at all times  
27 relevant herein, Defendants:

28 ///

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- a. Knew that the Storz Morcellator was dangerous and defective;
- b. Concealed the dangers and health risks from Plaintiff LISA M. MISKELLA, Plaintiff's physicians and the public;
- c. Made misrepresentations to Plaintiff LISA M. MISKELLA, her physicians and the public regarding the safety of the Storz Morcellator; and
- d. With full knowledge of the health risks associated with the Storz Morcellator and without adequate warnings of the same, manufactured, marketed, promoted, developed, sold and/or distributed the Storz Morcellator for routine use.

140. Defendants, by and through officers, directors, managing agents, authorized sales representatives, employees and/or other agents who engaged in malicious, fraudulent and oppressive conduct towards Plaintiff LISA M. MISKELLA and the public, acted will willful and wanton and/or conscious and reckless disregard for the safety of Plaintiff LISA M. MISKELLA and the general public.

**NINTH CAUSE OF ACTION**  
**Negligent Misrepresentation**  
**by Plaintiff LISA M. MISKELLA as Against All Defendants**

141. Plaintiff LISA M. MISKELLA re-alleges and incorporates herein by reference each and every allegation set forth in the Nature of the Action as set forth in Paragraphs 3 through 4, inclusive, Parties as set forth in Paragraphs 7 through 15, inclusive, Venue and Jurisdiction as set forth in Paragraphs 16 through 18, inclusive, and the General Allegations as set forth in Paragraphs 41 through 57, inclusive as though fully set forth at this point.

142. The Defendants, and each of them, represented and marketed the Storz Morcellator as being safe and effective. Notwithstanding that they had actual knowledge and constructive notice and knew or, in the exercise of reasonable care, should have known of the risk of using the Storz Morcellator for the treatment of uterine fibroids the Defendants, and each of them, failed to communicate to the FDA, the Plaintiff, physicians, distributors, hospitals, and/or the general public, that use of the Storz Morcellator could cause serious injury and/or death. The Defendants, and each of them, instead communicated and continued to communicate to all such persons/entities that the



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1 Storz Morcellator was safe for use. Specifically, the Defendants' misrepresentations include,  
2 without limitation, a representation to the Plaintiff and to her physicians that the Storz Morcellator  
3 was a safe and effective surgical instrument for the treatment of uterine fibroids.

4 143. The Defendants, and each of them, through their agents, representatives, distributors  
5 and/or employees negligently misrepresented the Storz Morcellator, its alleged benefits and its  
6 known and knowable risks and dangers in the following ways:

- 7 a. The Defendants, and each of them, failed to warn of the defective condition  
8 of the Storz Morcellator, as manufactured and/or supplied by the Defendants,  
9 and each of them;
- 10 b. The Defendants, and each of them, negligently misrepresented material facts  
11 about the Storz Morcellator in the course of their business in that they made  
12 such misrepresentations when they had actual knowledge and constructive  
13 notice and knew or, in the exercise of reasonable care, should have known of  
14 the falsity of such misrepresentations without exercising reasonable care to  
15 ascertain the accuracy of these representations;
- 16 c. The above misrepresentations were made to the FDA, the Plaintiff,  
17 physicians and hospitals, as well as to the general public;
- 18 d. The Defendants, and each of them, supplied false information regarding the  
19 safety and efficacy of the Storz Morcellator for the guidance of others,  
20 including the Plaintiff and her physicians;
- 21 e. The Defendants, and each of them, failed to exercise reasonable care or  
22 competence in obtaining or communicating information regarding the safety  
23 and efficacy of the Storz Morcellator to the Plaintiff, her physicians and  
24 others;
- 25 f. The Plaintiff and others justifiably relied on the misrepresentations of the  
26 Defendants, and each of them.

27 144. The Plaintiff suffered injuries and damages that were proximately caused by the  
28 Defendants' negligent misrepresentations related to the Storz Morcellator that was used in the

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1 Plaintiff's laparoscopic supracervical hysterectomy on March 6, 2012.

2 145. As a sole, direct and proximate result of the above-described negligence, conduct  
3 and tortious acts and omissions of the Defendants, and each of them, the Plaintiff was injured and  
4 hurt in her health, strength and activity, sustaining serious personal injuries to her body including,  
5 but not limited to, the dissemination, spread and upstaging of a deadly uterine cancer known as  
6 endometrial stromal sarcoma ("ESS") and other as-yet undiagnosed injuries all of which have  
7 required hospitalization and all of which continue to require medical care and treatment all to her  
8 general and non-economic damages in an amount which is in excess of this Court's minimum  
9 jurisdictional amount and which will be stated according to proof, pursuant to California § 425.10.

10 146. That as a further, direct and proximate result of the above-described negligence,  
11 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
12 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her  
13 laparoscopic supracervical hysterectomy on March 6, 2012, the Plaintiff was required to undergo  
14 and endure hospital and medical care and treatment all to her special and economic damages. The  
15 Plaintiff is informed and believes and, based upon such information and belief, alleges that some of  
16 these injuries will be permanent, all to her special and economic damages in an amount which will  
17 be stated according to proof, pursuant to California *Code of Civil Procedure* § 425.10.

18 147. That as a further, direct and proximate result of the above-described negligence,  
19 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
20 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
21 laparoscopic supracervical hysterectomy on March 6, 2012, the Plaintiff was prevented from  
22 attending to her usual occupation. The Plaintiff is informed and believes and, upon such  
23 information and belief, alleges that she will be prevented from attending to her usual occupation for  
24 a period of time in the future and that she has also sustained a loss of earning capacity, in addition to  
25 lost earnings, past and future. The exact amount of such past and future lost earnings and loss of  
26 earning capacity is unknown to the Plaintiff. When said amounts are ascertained, the Plaintiff will  
27 ask leave of Court to amend this Complaint and allege said amounts according to proof, pursuant to  
28 California *Code of Civil Procedure* § 425.10.

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**TENTH CAUSE OF ACTION**  
**Fraudulent Concealment**  
**by Plaintiff LISA M. MISKELLA as Against All Defendants**

148. Plaintiff LISA M. MISKELLA re-alleges and incorporates herein by reference each and every allegation set forth in the Nature of the Action as set forth in Paragraphs 3 through 4, inclusive, Parties as set forth in Paragraphs 7 through 15, inclusive, Venue and Jurisdiction as set forth in Paragraphs 16 through 18, inclusive, and the General Allegations as set forth in Paragraphs 41 through 57, inclusive as though fully set forth at this point.

149. The Defendants, and each of them, had actual knowledge and constructive notice and knew or, in the exercise of reasonable care, should have known that their Storz Morcellators were disseminating, seeding and upstaging undiagnosed uterine cancers thereby gravely and irreparably injuring women such as Plaintiff LISA M. MISKELLA. Further, the Defendants, and each of them, had actual knowledge and constructive notice and knew or, in the exercise of reasonable care, should have known that power morcellators used for the treatment of uterine fibroids were disseminating, seeding and upstaging uterine cancer at an alarmingly higher rate than they acknowledged and represented.

150. Notwithstanding their actual knowledge and constructive notice of the foregoing the Defendants, and each of them, nevertheless intentionally withheld from Plaintiff LISA M. MISKELLA and her healthcare providers the knowledge that the Storz Morcellator could disseminate, seed and upstage uterine cancer thereby causing grave and irreparable injury.

151. The Defendants, and each of them, had actual knowledge and constructive notice and knew or, in the exercise of reasonable care, should have known that Plaintiff LISA M. MISKELLA and others similarly situated could be gravely and irreparably harmed by the use of the Storz Morcellator, yet the Defendants, and each of them, intentionally withheld material facts from Plaintiff LISA M. MISKELLA and her healthcare providers, including the fact that the Storz Morcellator could disseminate, seed and upstage uterine cancer and the number of women statistically likely to present for the treatment of uterine fibroids with undiagnosed uterine cancer.

152. The Defendants, and each of them, had actual knowledge and constructive notice and knew and failed to disclose information and suppressed information as alleged herein with the

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1 fraudulent intent to induce Plaintiff LISA M. MISKELLA and her healthcare providers to act in  
2 reliance thereon.

3 153. Had Plaintiff LISA M. MISKELLA and/or her healthcare providers been aware of  
4 the existence of the facts known to but not disclosed and actively suppressed by the Defendants, and  
5 each of them, Plaintiff LISA M. MISKELLA would have elected to treat her uterine fibroid(s)  
6 without the use of the Storz Morcellator.

7 154. The fraudulent concealment of facts and suppression of information by the  
8 Defendants, and each of them, was a direct and proximate cause of Plaintiff LISA M. MISKELLA's  
9 injuries as a result of the Storz Morcellator that was used in Plaintiff LISA M. MISKELLA's  
10 laparoscopic supracervical hysterectomy on March 6, 2012.

11 155. Prior to and at the time that the laparoscopic uterine surgery utilizing the Storz  
12 Morcellator that was performed on the Plaintiff on March 6, 2012, the Defendants, and each of  
13 them, had actual knowledge and constructive notice and knew that the use of the Storz Morcellator  
14 caused dangerous side effects, including the dissemination, seeding and upstaging of uterine cancer  
15 and death and that its continued use would endanger the safety and well-being of members of the  
16 public including, but not limited to Plaintiff LISA M. MISKELLA.

17 156. Notwithstanding such actual knowledge and constructive notice, the Defendants, and  
18 each of them, purposefully and with conscious disregard for the safety of Plaintiff LISA M.  
19 MISKELLA and others similarly situated fraudulently concealed their actual knowledge and  
20 constructive notice that Storz Morcellators could be deadly when used for the treatment of uterine  
21 fibroids. The Defendants, and each of them, did everything in their power to fraudulently conceal  
22 and suppress the truth about the deadly effects of the defective Storz Morcellator. The Defendants,  
23 and each of them, fraudulently concealed their actual knowledge and constructive notice that the use  
24 of the Storz Morcellator in laparoscopic hysterectomies created serious side effects. The  
25 Defendants, and each of them, maliciously and fraudulently concealed the fact that people were  
26 being gravely injured and killed by the use of Storz Morcellators in laparoscopic hysterectomies  
27 such as the procedure performed on the Plaintiff on March 6, 2012.

28 ///

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1           157. As a sole, direct and proximate result of the above-described negligence, conduct  
2 and tortious acts and omissions of the Defendants, and each of them, Plaintiff LISA M. MISKELLA  
3 was injured and hurt in her health, strength and activity, sustaining serious personal injuries to her  
4 body including, but not limited to, the dissemination, spread and upstaging of a deadly uterine  
5 cancer known as endometrial stromal sarcoma ("ESS") and other as-yet undiagnosed injuries all of  
6 which have required hospitalization and all of which continue to require medical care and treatment  
7 all to her general and non-economic damages in an amount which is in excess of this Court's  
8 minimum jurisdictional amount and which will be stated according to proof, pursuant to California  
9 *Code of Civil Procedure* § 425.10.

10           158. That as a further, direct and proximate result of the above-described negligence,  
11 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
12 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in her  
13 laparoscopic supracervical hysterectomy on March 6, 2012, Plaintiff LISA M. MISKELLA was  
14 required to undergo and endure hospital and medical care and treatment all t her special and  
15 economic damages. Plaintiff LISA M. MISKELLA is informed and believes and, based upon such  
16 information and belief, alleges that some of these injuries will be permanent, all to her special and  
17 economic damages in an amount which will be stated according to proof, pursuant to California  
18 *Code of Civil Procedure* § 425.10.

19           159. That as a further, direct and proximate result of the above-described negligence,  
20 conduct and tortious acts and omissions of the Defendants, and each of them, and the injuries  
21 sustained as a sole, direct and proximate result of the use of the Storz Morcellator in the  
22 laparoscopic supracervical hysterectomy on March 6, 2012, Plaintiff LISA M. MISKELLA was  
23 prevented from attending to her usual occupation. Plaintiff LISA M. MISKELLA is informed and  
24 believes and, upon such information and belief, alleges that she will be prevented from attending to  
25 her usual occupation for a period of time in the future and that she has also sustained a loss of  
26 earning capacity, in addition to lost earnings, past and future. The exact amount of such past and  
27 future lost earnings and loss of earning capacity is unknown to Plaintiff LISA M. MISKELLA.  
28 When said amounts are ascertained, Plaintiff LISA M. MISKELLA will ask leave of Court to

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1 amend this Complaint and allege said amounts according to proof, pursuant to California *Code of*  
2 *Civil Procedure* § 425.10.

3 160. In doing the foregoing acts, the Defendants, and each of them, acted with malice as  
4 defined by California *Civil Code* § 3288, with willful and wanton negligence and in conscious  
5 disregard of the safety and well-being of others including, but not limited to, Plaintiff LISA M.  
6 MISKELLA. Such conduct qualifies as despicable conduct as that term is defined in California  
7 *Civil Code* § 3294, warranting the imposition of punitive or exemplary damages against the  
8 Defendants, and each of them, in order to set an example of them, and to dissuade them from future  
9 reckless and illegal conduct, in amounts according to proof at trial. Specifically, at all times relevant  
10 herein, Defendants:

- 11 a. Knew that the Storz Morcellator was dangerous and defective;
- 12 b. Concealed the dangers and health risks from Plaintiff LISA M.
- 13 MISKELLA, Plaintiff's physicians and the public;
- 14 c. Made misrepresentations to Plaintiff LISA M. MISKELLA, her physicians
- 15 and the public regarding the safety of the Storz Morcellator; and
- 16 d. With full knowledge of the health risks associated with the Storz
- 17 Morcellator and without adequate warnings of the same, manufactured,
- 18 marketed, promoted, developed, sold and/or distributed the Storz
- 19 Morcellator for routine use.

20 161. Defendants, by and through officers, directors, managing agents, authorized sales  
21 representatives, employees and/or other agents who engaged in malicious, fraudulent and  
22 oppressive conduct towards Plaintiff LISA M. MISKELLA and the public, acted will willful and  
23 wanton and/or conscious and reckless disregard for the safety of Plaintiff LISA M. MISKELLA  
24 and the general public.

25

26 **PRAYER FOR DAMAGES FOR PLAINTIFF JOANNE MURPHY**

27 **WHEREFORE**, Plaintiff JOANNE MURPHY, prays for judgment against Defendants  
28 **KARL STORZ ENDOSCOPY - AMERICA, INC.**, a California Corporation; **KARL STORZ**

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1 ENDOVISION, INC., a Massachusetts Corporation; KARL STORZ GMBH & CO. KG, A  
2 Business Entity Form Unknown, and DOES 1 through 1000, inclusive, and each of them, jointly  
3 and/or severally, as follows:

- 4 1. For non-economic or general damages for the personal injuries and emotional  
5 distress sustained by Plaintiff JOANNE MURPHY, according to proof;
- 6 2. For economic damages for the past and future medical care and treatment required  
7 and which will be required by Plaintiff JOANNE MURPHY, according to proof;
- 8 3. For economic damages for the past and future lost income and future lost earning  
9 capacity sustained by Plaintiff JOANNE MURPHY, according to proof;
- 10 4. For non-economic or general damages for the personal injuries and emotional  
11 distress;
- 12 5. For punitive and exemplary damages on the Third Cause of Action for Gross  
13 Negligence and the Fifth Cause of Action for Fraudulent Concealment as against  
14 Defendants, and each of them, subject to proof at the time of trial;
- 15 6. For prejudgment interest from the date of the surgery on December 18, 2010, to the  
16 date of Judgment, as provided by law, subject to proof at the time of trial;
- 17 7. For costs of litigation; and
- 18 8. For such other and further relief as this Court may deem just and proper.

19  
20 **PRAYER FOR DAMAGES FOR PLAINTIFF LISA M. MISKELLA**

21 **WHEREFORE**, Plaintiff LISA M. MISKELLA, prays for judgment against Defendants  
22 KARL STORZ ENDOSCOPY - AMERICA, INC., a California Corporation; KARL STORZ  
23 ENDOVISION, INC., a Massachusetts Corporation; KARL STORZ GMBH & CO. KG, A  
24 Business Entity Form Unknown, and DOES 1 through 1000, inclusive, and each of them, jointly  
25 and/or severally, as follows:

- 26 1. For non-economic or general damages for the personal injuries and emotional  
27 distress sustained by Plaintiff LISA M. MISKELLA, according to proof;
- 28 2. For economic damages for the past and future medical care and treatment required



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and which will be required by Plaintiff LISA M. MISKELLA, according to proof;

3. For economic damages for the past and future lost income and future lost earning capacity sustained by Plaintiff LISA M. MISKELLA, according to proof;

4. For non-economic or general damages for the personal injuries and emotional distress;

5. For punitive and exemplary damages on the Eighth Cause of Action for Gross Negligence and the Tenth Cause of Action for Fraudulent Concealment as against Defendants, and each of them, subject to proof at the time of trial;

6. For prejudgment interest from the date of the surgery on March 6, 2012, to the date of Judgment, as provided by law, subject to proof at the time of trial;

7. For costs of litigation; and

8. For such other and further relief as this Court may deem just and proper.

DATED: July 10, 2015

**KIESEL LAW LLP**

By: 

Paul R. Kiesel  
Helen Zukin  
Steven D. Archer  
Mariana Aroditis

**TRACEY & FOX**

Sean P. Tracey, *Pro Hac Vice Pending*  
Rebecca B. King, *Pro Hac Vice Pending*  
Andy Rubenstein, *Pro Hac Vice Pending*

Attorneys for Plaintiffs

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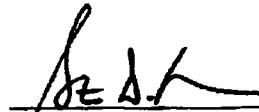
**DEMAND FOR JURY TRIAL**

Plaintiffs JOANNE MURPHY and LISA M. MISKELLA hereby demand a jury trial to the full extent permitted by law.

DATED: July 10, 2015

KIESEL LAW LLP

By:



Paul R. Kiesel  
Helen Zukin  
Steven D. Archer  
Mariana Aroditis

**TRACEY & FOX**

Sean P. Tracey, *Pro Hac Vice Pending*  
Rebecca B. King, *Pro Hac Vice Pending*  
Andy Rubenstein, *Pro Hac Vice Pending*

Attorneys for Plaintiffs

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Paul R. Kiesel, Esq. (SBN 119834) Helen Zukin, Esq. (SBN 117933) Steven D. Archer, Esq. (SBN 63834) KIESEL LAW LLP - 8648 Wilshire Blvd., Beverly Hills, CA 90211 TELEPHONE NO: (310) 854-4444 FAX NO: (310) 854-0812 ATTORNEY FOR (Name): <b>Plaintiffs</b>		FOR COURT USE ONLY  <b>CONFORMED COPY</b> <b>ORIGINAL FILED</b> Superior Court Of California County Of Los Angeles  <b>JUL 10 2015</b>  Sherri R. Carter, Executive Officer/Clerk By: Kristina Vargas, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Los Angeles</b> STREET ADDRESS: <b>111 N. Hill Street</b> MAILING ADDRESS: <b>same as above</b> CITY AND ZIP CODE: <b>Los Angeles 90012</b> BRANCH NAME: <b>Central District</b>		CASE NUMBER <b>BC 587002</b>  JUDGE: DEPT:
CASE NAME: <b>Joanne Murphy, etc., et al. v. Karl Storz Endoscopy-America, Inc.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) <b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) <b>Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input checked="" type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) <b>Non-PIP/DWD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |   |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties   | d. <input checked="" type="checkbox"/> Large number of witnesses  |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision   |
3. Remedies sought (check all that apply): a. ☒ monetary     b. ☐ nonmonetary; declaratory or injunctive relief     c. ☐ punitive
4. Number of causes of action (specify): **10**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **July 10, 2015**  
 Steven D. Archer, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CM-010

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES****Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) *(If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

**Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability *(not asbestos or toxic/environmental)* (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other P/DPD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other P/DPD/WD

**Non-P/DPD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (06)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice *(not medical or legal)*  
Other Non-P/DPD/WD Tort (35)

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract *(not unlawful detainer or wrongful eviction)*  
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage *(not provisionally complex)* (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)  
Enforcement of Judgment  
Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment *(non-domestic relations)*  
Sister State Judgment  
Administrative Agency Award *(not unpaid taxes)*  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)  
Other Complaint *(not specified above)* (42)  
Declaratory Relief Only  
Injunctive Relief Only *(non-harassment)*  
Mechanics Lien  
Other Commercial Complaint Case *(non-tort/non-complex)*  
Other Civil Complaint *(non-tort/non-complex)*

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition *(not specified above)* (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

SHORT TITLE: Joanne Murphy, etc., et al. v. Karl Storz Endoscopy-America, Inc.	CASE NUMBER: BC587002
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**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 20-25 ☐ HOURS/ ☒ DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case.

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |  |  |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 6. Location of property or permanently garaged vehicle.    |
| 2. May be filed in central (other county, or no bodily injury/property damage).  | 7. Location where petitioner resides.                      |
| 3. Location where cause of action arose.   | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred.                       | 9. Location where one or more of the parties reside.       |
| 5. Location where performance required or defendant resides.                     | 10. Location of Labor Commissioner Office                  |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input checked="" type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4. 1., 4. 1., 3. 1., 4.

SHORT TITLE: <b>Joanne Murphy, etc., et al. v. Karl Storz Endoscopy-America, Inc.</b>	CASE NUMBER:
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6006 Contract/Warranty Breach-Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels _____	2.
Real Property	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE: <b>Joanne Murphy, etc., et al. v. Karl Storz Endoscopy-America, Inc.</b>	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A8108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	<input type="checkbox"/> A8115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
	Writ of Mandate (02)	<input type="checkbox"/> A8151 Writ - Administrative Mandamus <input type="checkbox"/> A8152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A8153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	<input type="checkbox"/> A8150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A8003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A8007 Construction Defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A8006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A8035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A8036 Toxic Tort/Environmental	1., 2., 3., 8.
Enforcement of Judgment	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A8014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
	Enforcement of Judgment (20)	<input type="checkbox"/> A8141 Sister State Judgment <input type="checkbox"/> A8180 Abstract of Judgment <input type="checkbox"/> A8107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A8140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A8114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A8112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A8033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A8030 Declaratory Relief Only <input type="checkbox"/> A8040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A8011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A8000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A8113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A8121 Civil Harassment <input type="checkbox"/> A8123 Workplace Harassment <input type="checkbox"/> A8124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A8190 Election Contest <input type="checkbox"/> A8110 Petition for Change of Name <input type="checkbox"/> A8170 Petition for Relief from Late Claim Law <input type="checkbox"/> A8100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.



SHORT TITLE: Joanne Murphy, etc., et al. v. Karl Storz Endoscopy-America, Inc.	CASE NUMBER
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**Item III. Statement of Location:** Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

<b>REASON:</b> Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.  <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input checked="" type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		<b>ADDRESS:</b> 2151 E. Grand Avenue
<b>CITY:</b> El Segundo	<b>STATE:</b> CA	<b>ZIP CODE:</b> 90245

**Item IV. Declaration of Assignment:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: July 10, 2015

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for Issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

CM-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Paul R. Kiesel, Esq. (SBN 119854) Helen Zukin, Esq. (SBN 117933) Steven D. Archer, Esq. (SBN 63834) KIESEL LAW LLP - 8648 Wilshire Blvd., Beverly Hills, CA 90211 TELEPHONE NO.: (310) 854-4444 FAX NO. (Optional): (310) 854-0812 E-MAIL ADDRESS (Optional): kiesel@kiesel-law.com   archer@kiesel-law.com ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY  <b>CONFORMED COPY ORIGINAL FILED</b> Superior Court Of California County Of Los Angeles  <b>JUL 10 2015</b>  Sherri R. Carter, Executive Officer/Clerk By: Kristina Vargas, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: same as above CITY AND ZIP CODE: Los Angeles 90012 BRANCH NAME: Central District	
PLAINTIFF/PETITIONER: Joanne Murphy, etc., et al.	CASE NUMBER: <b>BC 587002</b>
DEFENDANT/RESPONDENT: Karl Storz Endoscopy-America, Inc.	JUDICIAL OFFICER:
NOTICE OF RELATED CASE	DEPT.:

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Sylvia A. O'Neil, etc., et al. v. Karl Storz Endoscopy-America, Inc.
  - b. Case number: BC581718
  - c. Court: ☒ same as above  
☐ other state or federal court (name and address):
  - d. Department: 49
  - e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
  - f. Filing date: May 12, 2015
  - g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
  - h. Relationship of this case to the case referenced above (check all that apply):
    - ☒ Involves the same parties and is based on the same or similar claims.
    - ☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
    - ☐ involves claims against, title to, possession of, or damages to the same property.
    - ☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
    - ☐ Additional explanation is attached in attachment 1h
  - i. Status of case:
    - ☒ pending
    - ☐ dismissed ☐ with ☐ without prejudice
    - ☐ disposed of by judgment
2. a. Title:
  - b. Case number:
  - c. Court: ☐ same as above  
☐ other state or federal court (name and address):
  - d. Department:

CM-015

PLAINTIFF/PETITIONER: Joanne Murphy, etc., et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: Karl Storz Endoscopy-America, Inc.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL****NOTICE OF RELATED CASE**

**(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)**

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):
  
  2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):
    - a. ☐ deposited the sealed envelope with the United States Postal Service.
    - b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  3. The *Notice of Related Case* was mailed:
    - a. on (date):
    - b. from (city and state):
  4. The envelope was addressed and mailed as follows:
 

a. Name of person served:  Street address: City: State and zip code:	c. Name of person served:  Street address: City: State and zip code:
b. Name of person served:  Street address: City: State and zip code:	d. Name of person served:  Street address: City: State and zip code:
- ☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ (TYPE OR PRINT NAME OF DECLARANT)	_____ (SIGNATURE OF DECLARANT)
--	-----------------------------------

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**  
**NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE (NON-CLASS ACTION)**  
Case Number \_\_\_\_\_

BC 587002

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judge indicated below. There is more information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Kevin C. Brazile	1	534	Hon. Elizabeth Allen White	48	506
Hon. Barbara A. Melers	12	636	Hon. Deirdre Hill	49	509
Hon. Terry A. Green	14	300	Hon. John L. Segal	50	508
Hon. Richard Frain	15	307	Hon. Mitchell L. Beckloff	51	511
Hon. Rita Miller	16	306	Hon. Susan Bryant-Denson	52	510
Hon. Richard E. Rice	17	309	Hon. Steven J. Kleinfeld	53	513
Hon. Stephanie Bowick	19	311	Hon. Ernest M. Hiroshige	54	512
Hon. Delila Corral Lyons	20	310	Hon. Malcolm H. Mackay	55	515
Hon. Robert L. Hass	24	314	Hon. Michael Johnson	56	514
Hon. Yvette M. Palazuelos	25	318	Hon. Rolf M. Trou	58	516
Hon. Barbara Schepers	30	400	Hon. Gregory Keenan	61	732
Hon. Samantha Jesener	31	407	Hon. Michael L. Stern	62	608
Hon. Mary H. Strobel	32	406	Hon. Mark Mooney	68	617
Hon. Michael P. Linfield	34	408	Hon. William F. Fahey	69	621
Hon. Gregory Alarcon	36	410	Hon. Suzanne G. Bruguera	71	729
Hon. Marc Marmaro	37	413	Hon. Ruth Ann Kwan	72	731
Hon. Maureen Duffy-Lewis	38	412	Hon. Rafael Ongkeko	73	733
Hon. Elizabeth Feffer	39	415	Hon. Teresa Sanchez-Gordon	74	735
Hon. Michelle R. Rosenblatt	40	414	Hon. Gail Roderman Feuer	78	730
Hon. Holly E. Kendig	42	416			
Hon. Mel Rod Recana	45	529	Hon. Emilio H. Elias	324	CCW
Hon. Frederick C. Shaller	46	509	*Provisionally Complex Non-class Action Cases Assignment is Pending Complex Determination	324	CCW
Hon. Debra K. Weintraub	47	507			

**\*Complex**

All non-class action cases designated as provisionally complex are forwarded to the Supervising Judge of the Complex Litigation Program located in the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005), for complex/non-complex determination pursuant to Local Rule 3.3(h). This procedure is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.026. Depending on the outcome of that assessment, the case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on Jul 10 2015 SHERRI R. CARTER, Executive Officer/Clerk  
By Kristina Vargas, Deputy Clerk

## **INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES**

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

### **APPLICATION**

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

### **PRIORITY OVER OTHER RULES**

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

### **CHALLENGE TO ASSIGNED JUDGE**

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

### **TIME STANDARDS**

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

**COMPLAINTS:** All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

**CROSS-COMPLAINTS:** Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

### **FINAL STATUS CONFERENCE**

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

### **SANCTIONS**

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

## VOLUNTARY EFFICIENT LITIGATION STIPULATIONS



Superior Court of California  
County of Los Angeles



Los Angeles County  
Bar Association  
Litigation Section

Los Angeles County  
Bar Association Labor and  
Employment Law Section



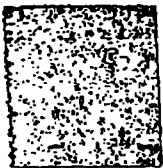
Consumer Attorneys  
Association of Los Angeles



Southern California  
Defense Counsel



Association of  
Business Trial Lawyers



California Employment  
Lawyers Association

The Early Organizational Meeting Stipulation, Discovery Resolution Stipulation, and Motions in Limine Stipulation are voluntary stipulations entered into by the parties. The parties may enter into one, two, or all three of the stipulations; however, they may not alter the stipulations as written, because the Court wants to ensure uniformity of application. These stipulations are meant to encourage cooperation between the parties and to assist in resolving issues in a manner that promotes economic case resolution and judicial efficiency.

*The following organizations endorse the goal of promoting efficiency in litigation and ask that counsel consider using these stipulations as a voluntary way to promote communications and procedures among counsel and with the court to fairly resolve issues in their cases.*

◆ Los Angeles County Bar Association Litigation Section ◆

◆ Los Angeles County Bar Association  
Labor and Employment Law Section ◆

◆ Consumer Attorneys Association of Los Angeles ◆

◆ Southern California Defense Counsel ◆

◆ Association of Business Trial Lawyers ◆

◆ California Employment Lawyers Association ◆

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>STIPULATION – DISCOVERY RESOLUTION</b>			CASE NUMBER

This stipulation is intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.

The parties agree that:

1. Prior to the discovery cut-off in this action, no discovery motion shall be filed or heard unless the moving party first makes a written request for an Informal Discovery Conference pursuant to the terms of this stipulation.
2. At the Informal Discovery Conference the Court will consider the dispute presented by parties and determine whether it can be resolved informally. Nothing set forth herein will preclude a party from making a record at the conclusion of an Informal Discovery Conference, either orally or in writing.
3. Following a reasonable and good faith attempt at an informal resolution of each issue to be presented, a party may request an Informal Discovery Conference pursuant to the following procedures:
  - a. The party requesting the Informal Discovery Conference will:
    - i. File a Request for Informal Discovery Conference with the clerk's office on the approved form (copy attached) and deliver a courtesy, conformed copy to the assigned department;
    - ii. Include a brief summary of the dispute and specify the relief requested; and
    - iii. Serve the opposing party pursuant to any authorized or agreed method of service that ensures that the opposing party receives the Request for Informal Discovery Conference no later than the next court day following the filing.
  - b. Any Answer to a Request for Informal Discovery Conference must:
    - i. Also be filed on the approved form (copy attached);
    - ii. Include a brief summary of why the requested relief should be denied;



SHORT TITLE	CASE NUMBER
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- iii. Be filed within two (2) court days of receipt of the Request; and
  - iv. Be served on the opposing party pursuant to any authorized or agreed upon method of service that ensures that the opposing party receives the Answer no later than the next court day following the filing.
- c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
- d. If the Court has not granted or denied the Request for Informal Discovery Conference within ten (10) days following the filing of the Request, then it shall be deemed to have been denied. If the Court acts on the Request, the parties will be notified whether the Request for Informal Discovery Conference has been granted or denied and, if granted, the date and time of the Informal Discovery Conference, which must be within twenty (20) days of the filing of the Request for Informal Discovery Conference.
- e. If the conference is not held within twenty (20) days of the filing of the Request for Informal Discovery Conference, unless extended by agreement of the parties and the Court, then the Request for the Informal Discovery Conference shall be deemed to have been denied at that time.
4. If (a) the Court has denied a conference or (b) one of the time deadlines above has expired without the Court having acted or (c) the Informal Discovery Conference is concluded without resolving the dispute, then a party may file a discovery motion to address unresolved issues.
5. The parties hereby further agree that the time for making a motion to compel or other discovery motion is tolled from the date of filing of the Request for Informal Discovery Conference until (a) the request is denied or deemed denied or (b) twenty (20) days after the filing of the Request for Informal Discovery Conference, whichever is earlier, unless extended by Order of the Court.
- It is the understanding and intent of the parties that this stipulation shall, for each discovery dispute to which it applies, constitute a writing memorializing a "specific later date to which the propounding [or demanding or requesting] party and the responding party have agreed in writing," within the meaning of Code Civil Procedure sections 2030.300(c), 2031.320(c), and 2033.280(c).
6. Nothing herein will preclude any party from applying ex parte for appropriate relief, including an order shortening time for a motion to be heard concerning discovery.
7. Any party may terminate this stipulation by giving twenty-one (21) days notice of intent to terminate the stipulation.
8. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

<p><b>EVENT TITLE:</b></p>	<p><b>CASE NUMBER:</b></p>
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**The following parties stipulate:**

**Date:**

\_\_\_\_\_  
(TYPE OR PRINT NAME)

>

\_\_\_\_\_  
(ATTORNEY FOR PLAINTIFF)

**Date:**

\_\_\_\_\_  
(TYPE OR PRINT NAME)

>

\_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

**Date:**

\_\_\_\_\_  
(TYPE OR PRINT NAME)

>

\_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

**Date:**

\_\_\_\_\_  
(TYPE OR PRINT NAME)

>

\_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

**Date:**

\_\_\_\_\_  
(TYPE OR PRINT NAME)

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\_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

**Date:**

\_\_\_\_\_  
(TYPE OR PRINT NAME)

>

\_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

**Date:**

\_\_\_\_\_  
(TYPE OR PRINT NAME)

>

\_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Court's File Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR: <i>Plaintiff</i>		FAX NO. (Optional):	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEPENDANT:			CASE NUMBER:
<b>STIPULATION – EARLY ORGANIZATIONAL MEETING</b>			

This stipulation is intended to encourage cooperation among the parties at an early stage in the litigation and to assist the parties in efficient case resolution.

The parties agree that:

1. The parties commit to conduct an initial conference (in-person or via teleconference or via videoconference) within 15 days from the date this stipulation is signed, to discuss and consider whether there can be agreement on the following:
  - a. Are motions to challenge the pleadings necessary? If the issue can be resolved by amendment as of right, or if the Court would allow leave to amend, could an amended complaint resolve most or all of the issues a demurrer might otherwise raise? If so, the parties agree to work through pleading issues so that a demurrer need only raise issues they cannot resolve. Is the issue that the defendant seeks to raise amenable to resolution on demurrer, or would some other type of motion be preferable? Could a voluntary targeted exchange of documents or information by any party cure an uncertainty in the pleadings?
  - b. Initial mutual exchanges of documents at the "core" of the litigation. (For example, in an employment case, the employment records, personnel file and documents relating to the conduct in question could be considered "core." In a personal injury case, an incident or police report, medical records, and repair or maintenance records could be considered "core.");
  - c. Exchange of names and contact information of witnesses;
  - d. Any insurance agreement that may be available to satisfy part or all of a judgment, or to indemnify or reimburse for payments made to satisfy a judgment;
  - e. Exchange of any other information that might be helpful to facilitate understanding, handling, or resolution of the case in a manner that preserves objections or privileges by agreement;
  - f. Controlling issues of law that, if resolved early, will promote efficiency and economy in other phases of the case. Also, when and how such issues can be presented to the Court;
  - g. Whether or when the case should be scheduled with a settlement officer, what discovery or court ruling on legal issues is reasonably required to make settlement discussions meaningful, and whether the parties wish to use a sitting judge or a private mediator or other options as

SHORT TITLE:	CASE NUMBER:
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discussed in the "Alternative Dispute Resolution (ADR) Information Package" served with the complaint;

- h. Computation of damages, including documents, not privileged or protected from disclosure, on which such computation is based;
  - i. Whether the case is suitable for the Expedited Jury Trial procedures (see information at [www.jsuperiorcourt.org](http://www.jsuperiorcourt.org) under "Civil" and then under "General Information").
2. The time for a defending party to respond to a complaint or cross-complaint will be extended to \_\_\_\_\_ for the complaint, and \_\_\_\_\_ for the cross-complaint, which is comprised of the 30 days to respond under Government Code § 68616(b), and the 30 days permitted by Code of Civil Procedure section 1064(a), good cause having been found by the Civil Supervising Judge due to the case management benefits provided by this Stipulation. A copy of the General Order can be found at [www.jsuperiorcourt.org](http://www.jsuperiorcourt.org) under "Civil", click on "General Information", then click on "Voluntary Efficient Litigation Stipulations".
3. The parties will prepare a joint report titled "Joint Status Report Pursuant to Initial Conference and Early Organizational Meeting Stipulation", and if desired, a proposed order summarizing results of their meet and confer and advising the Court of any way it may assist the parties' efficient conduct or resolution of the case. The parties shall attach the Joint Status Report to the Case Management Conference statement, and file the documents when the CMC statement is due.
4. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

The following parties stipulate:

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

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Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

> \_\_\_\_\_  
(ATTORNEY FOR PLAINTIFF)

> \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

> \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

> \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

> \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

> \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

> \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		SERVICE NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>INFORMAL DISCOVERY CONFERENCE</b> (pursuant to the Discovery Resolution Stipulation of the parties)			CASE NUMBER:

## 1. This document relates to:

☐

Request for Informal Discovery Conference

Answer to Request for Informal Discovery Conference

## 2. Deadline for Court to decide on Request: \_\_\_\_\_ (Insert date 10 calendar days following filing of the Request).

## 3. Deadline for Court to hold Informal Discovery Conference: \_\_\_\_\_ (Insert date 20 calendar days following filing of the Request).

4. For a Request for Informal Discovery Conference, briefly describe the nature of the discovery dispute, including the facts and legal arguments at issue. For an Answer to Request for Informal Discovery Conference, briefly describe why the Court should deny the requested discovery, including the facts and legal arguments at issue.

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Court's File Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Client):		FAX NO. (Optional):	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			CHIEF CLERK
<b>STIPULATION AND ORDER – MOTIONS IN LIMINE</b>			

This stipulation is intended to provide fast and informal resolution of evidentiary issues through diligent efforts to define and discuss such issues and limit paperwork.

The parties agree that:

1. At least \_\_\_\_ days before the final status conference, each party will provide all other parties with a list containing a one paragraph explanation of each proposed motion in limine. Each one paragraph explanation must identify the substance of a single proposed motion in limine and the grounds for the proposed motion.
2. The parties thereafter will meet and confer, either in person or via teleconference or videoconference, concerning all proposed motions in limine. In that meet and confer, the parties will determine:
  - a. Whether the parties can stipulate to any of the proposed motions. If the parties so stipulate, they may file a stipulation and proposed order with the Court.
  - b. Whether any of the proposed motions can be briefed and submitted by means of a short joint statement of issues. For each motion which can be addressed by a short joint statement of issues, a short joint statement of issues must be filed with the Court 10 days prior to the final status conference. Each side's portion of the short joint statement of issues may not exceed three pages. The parties will meet and confer to agree on a date and manner for exchanging the parties' respective portions of the short joint statement of issues and the process for filing the short joint statement of issues.
3. All proposed motions in limine that are not either the subject of a stipulation or briefed via a short joint statement of issues will be briefed and filed in accordance with the California Rules of Court and the Los Angeles Superior Court Rules.

CASE TITLE:	CASE NUMBER:
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**The following parties stipulate:**

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

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Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

> \_\_\_\_\_  
(ATTORNEY FOR PLAINTIFF)

> \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

> \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

> \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

> \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

> \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

> \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

**THE COURT SO ORDERS.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER



KIESEL LAW LLP  
Attorneys at Law  
Beverly Hills, California

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4 Mariana Aroditis, State Bar No. 273225  
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11 **TRACEY & FOX**  
440 Louisiana, Suite 1901  
12 Houston, Texas 77002  
Tel.: 713-495-2333  
13 Fax: 866-709-2333

14 Attorneys for Plaintiffs

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF LOS ANGELES**

17 **JOANNE MURPHY, an Individual; and**  
18 **LISA M. MISKELLA, an Individual,**

19 **Plaintiffs,**

20 **v.**

21 **KARL STORZ ENDOSCOPY-AMERICA,**  
**INC., a California Corporation; KARL**  
22 **STORZ ENDOVISION, INC., a**  
**Massachusetts Corporation; KARL STORZ**  
23 **GMBH & CO. KG, A Business Entity Form**  
**Unknown, and DOES 1 through 1000,**  
24 **inclusive,**

25 **Defendants.**

**Case No. BC 587002**

**PLAINTIFFS' STATEMENT OF**  
**DAMAGES**

[California Code of Civil Procedure §425.11]

Action Filed: July 10, 2015

Trial Date: None

KIESEL LAW LLP  
Attorneys at Law  
Beverly Hills, California

**TO DEFENDANTS AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:**

COME NOW the Plaintiffs, JOANNE MURPHY, an Individual [hereinafter alternatively referred to as "JOANNE MURPHY" and/or "Ms. Murphy"], and LISA M. MISKELLA, an Individual [hereinafter alternatively referred to as "LISA M. MISKELLA" and/or "Ms. Miskella"] [hereinafter collectively referred to as "Plaintiffs"], by and through their attorneys of record, Kiesel Law LLP and Tracey & Fox, and pursuant to the provisions of California *Code of Civil Procedure* § 425.11 herewith set forth their respective Statement of Damages, as follows:

Statement of Damages on behalf of Plaintiff JOANNE MURPHY, an Individual:

1. General Damages in the amount of \$ 10,000,000.00
2. Special Damages including, but not limited to:
  - a. Past and future medical expenses subject to proof at the time of trial
  - b. Past and future lost income and lost earning capacity subject to proof at the time of trial;
3. For punitive and exemplary damages on the Third Cause of Action for Gross Negligence and the Fifth Cause of Action for Fraudulent Concealment, subject to proof at the time of trial;
4. Retroactive interest from the date of the surgery on December 18, 2010 up through and including the date of Judgment;
5. Costs of litigation subject to proof at the time of trial; and,
6. Such other and further relief as the Court shall deem just and proper.

Statement of Damages on behalf of Plaintiff LISA M. MISKELLA, an Individual:

1. General Damages in the amount of \$ 10,000,000.00
2. Special Damages including, but not limited to:
  - a. Past and future medical expenses subject to proof at the time of trial

KIESEL LAW LLP  
Attorneys at Law  
Beverly Hills, California

- 1 b. Past and future lost income and lost earning capacity
- 2 subject to proof at the time of trial;
- 3 c. Future Lost Financial Support subject to proof at the time of trial;
- 4 3. For punitive and exemplary damages on the Eighth Cause of Action
- 5 for Gross Negligence and the Tenth Cause of Action for Fraudulent
- 6 Concealment, subject to proof at the time of trial;
- 7 4. Retroactive interest from the date of the surgery on March 6, 2012
- 8 up through and including the date of Judgment;
- 9 5. Costs of litigation subject to proof at the time of trial; and,
- 10 6. Such other and further relief as the Court shall deem just and proper.
- 11

12 DATED: July 16, 2015

KIESEL LAW LLP

By: 

Paul R. Kiesel  
Helen Zukin  
Steven D. Archer  
Mariana Aroditis

**TRACEY & FOX**

Sean P. Tracey, *Pro Hac Vice Pending*  
Rebecca B. King, *Pro Hac Vice Pending*  
Andy Rubenstein, *Pro Hac Vice Pending*

Attorneys for Plaintiffs

**PROOF OF SERVICE -- §1013a CODE OF CIVIL PROCEDURE,  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 1230 Rosecrans Avenue, Suite 450, Manhattan Beach, California 90266.

On **August 19, 2015** I served the foregoing document described as:

**DECLARATION OF HARLAN N. PEOTYAN OF DEFENDANT KARL STORZ'S NOTICE OF  
REMOVAL OF ACTON UNDER 28 U.S.C. § 1441 [DIVERSITY OF CITIZENSHIP]**

on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

**XX By Mail** I caused such envelope to be deposited in the mail at Manhattan Beach, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

**By Facsimile** by facsimile machine, which facsimile machine's fax number is 310-297-9800, to the following facsimile numbers of the interested parties listed herein as follows. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and the transmission was reported as complete and without error. Pursuant to Rule 2008(e)(4), a copy of the transmission report, properly issued by the transmitting facsimile machine, is attached to this proof of service.

**By Express Mail** I caused such envelope to be deposited in the mail at Manhattan Beach, California. The envelope was mailed with Express Mail postage thereon fully prepaid.

**By Overnight Delivery** I caused such envelope to be sent via overnight delivery service. The envelope was deposited in or with a facility regularly maintained by the express service carrier with delivery fees paid or provided for.

**XX State** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **August 19, 2015**, at Manhattan Beach, California.

/ S /

Kathleen Slevcove

**SERVICE LIST****Sylvia A. O'Neil, et al. v. Karl Storz Endoscopy-America, Inc.**

LASC Case No.: BC581718

Our File No: 348-3

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